Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term 1995

In re CHATEAUGAY CORPORATION,
REOMAR, INC.,
THE LTV CORPORATION, *et al.*,

Debtors.

LTV STEEL COMPANY, INC.,
BCNR MINING CORPORATION,
NEMACOLIN MINES CORPORATION, and
TUSCALOOSA ENERGY CORPORATION,

Petitioners,

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY; THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, MICHAEL H. HOLLAND, as Trustee of the Combined Fund, and WILLIAM P. HOBGOOD, as Trustee of the Combined Fund,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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July 14, 1995

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QUESTIONS PRESENTED

Whether this Court should review the decision of the Court of Appeals for the Second Circuit because it (1) extends a conflict among the circuits concerning the scope of the definition of "claim" in the Bankruptcy Reform Act of 1978, and (2) interprets the Coal Industry Retiree Health Benefits Act of 1992 to reverse a prior final judgment between the parties in violation of the Constitutional requirements of the separation of powers doctrine?

STATEMENT PURSUANT TO RULE 29.6 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States and to enable justices of the Court to evaluate possible disqualification or recusal, Petitioner LTV Steel Company, Inc. states that it is a wholly owned subsidiary of The LTV Corporation, and that other than The LTV Corporation, it has no parent companies, subsidiaries or affiliates that have issued shares to the public. Petitioners BCNR Mining Corporation, Nemacolin Mines Corporation and Tuscaloosa Energy Corporation state that they are wholly owned subsidiaries of Petitioner LTV Steel Company, Inc. and that they have no parent companies, subsidiaries or affiliates that have issued shares to the public.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Second Circuit, filed June 5, 1995.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit is reported at 53 F.3d 478 (2d Cir. 1995) and is reprinted in the Appendix (''App.'') accompanying this Petition at pages A-1 to 46. The opinion of the United States District Court for the Southern District of New York (Martin, J.) is reported at 163 B.R. 955 (S.D.N.Y. 1993) and is reprinted at App. B-1 to 20. The opinion of the United States District Court for the Southern District of New York (Martin, J.) is reported at 154 B.R. 416 (S.D.N.Y. 1993) and is reprinted at App. C-1 to 18. The decision of the United States Court of Appeals for the Second Circuit is reported at 945 F.2d 1205 (2d Cir. 1991) and is reprinted at App. D-1 to 20.

JURISDICTION

The District Court had subject matter jurisdiction of this case under 28 U.S.C. §§ 1331 and 1334 as a case which arises under the Bankruptcy Reform Act of 1978, as amended (the ''Bankruptcy Code''), and which challenges the legality and constitutionality of a federal statute, the Coal Industry Retiree Health Benefits Act of 1992 (the ''Coal Act''). The Court of Appeals for the Second Circuit had appellate jurisdiction of this case under 28 U.S.C. § 1291 as an appeal from a final judgment entered on December 28, 1993, which dismissed LTV Steel's complaint in its entirety. LTV Steel filed its notice of appeal on January 13, 1994, within the time period allowed under Rule 4 of the Federal Rules of Appellate Procedure. The Second Circuit filed its opinion on April 17, 1995 and issued its mandate on June 5, 1995.

This Court has appellate jurisdiction of this case under 28 U.S.C. § 1254(1), which permits review by writ of *certiorari* after rendition of a judgment or decree by a United States Court of Appeals.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article III, section 1, of the United States Constitution states, in pertinent part:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Section 101(5) of the Bankruptcy Code, 11 U.S.C. § 101(5) provides that:

> "Claim means
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured[.]"

The Coal Industry Retiree Health Benefits Act of 1992, 26 U.S.C. § 9701 *et seq.*, is reprinted in the Appendix accompanying this Petition at App. E-1 to 47.

STATEMENT OF THE CASE

The Court of Appeals for the Second Circuit holds that a contract obligation, which was entered into before the filing of a bankruptcy petition and which expired during the bankruptcy proceeding, is of sufficient substance to support imposition of post-confirmation liability on the debtor, yet of insufficient substance to give rise to a "claim" under the Bankruptcy Code. The decision raises two issues requiring

review in this Court. These are 1) the scope of the Bankruptcy Code definition of ''claim'' with respect to post-petition legislation that imposes liabilities arising exclusively from pre-petition conduct; and 2) the proper construction of legislation that has been interpreted to reverse a final judgment. On the first issue, the courts of appeals are in sharp conflict. On the second issue, the Second Circuit's decision creates an unconstitutional violation of the separation of powers doctrine.

Background

From 1950 to 1984, LTV Steel Company, through its predecessors and subsidiaries (''LTV Steel''), was signatory to National Bituminous Coal Wage Agreements (''Wage Agreements''). App. A-9, 34. The Wage Agreements governed the terms and conditions of the employment of mine workers. The Agreements provided that in return for their labor, the mine workers would be paid both in current wages and in future benefits payable after retirement. The Wage Agreements were structured to provide future retiree health benefits through two trusts. Employers were obligated, during the term of a Wage Agreement, to make contributions to these trusts based upon tons of coal mined. App. A-5. The trusts were charged with maintaining the funds and making benefit payments to retired mine workers.

The Bankruptcy and Prior Final Decision

In 1986, overwhelmed by retiree liabilities, LTV Steel and over fifty affiliated companies filed for bankruptcy. App. A-11. Shortly after the filing, LTV Steel received court authority to pay pre-petition retiree benefits, including payments due to the trusts under the Wage Agreements.

LTV Steel had ceased coal operations in the early 1980's. In 1988, LTV Steel's obligation to provide benefits to the mine worker retirees ended when the last Wage Agreement to which LTV Steel was a party expired. App. A-11. LTV Steel

had fully performed under the Wage Agreements. However, one of the mine worker trusts, the "Benefit Trust", contended despite the express terms of the Wage Agreements that the Retiree Benefits Bankruptcy Protection Act, enacted in 1988,[1] extended LTV Steel's liability for benefits. Litigation ensued. Ultimately, the Court of Appeals for the Second Circuit held that LTV Steel had no further obligations arising under the pre-petition Wage Agreements.

> "According to the terms of the Wage Agreement, the Mining Companies [LTV Steel and its coal mining subsidiaries] were responsible for the provision of benefits during the term of the Wage Agreement. When that Agreement expired, however, that obligation shifted to the Benefit Trust. The Benefit Trust is now responsible for the continued provision of the retiree health benefits. This conclusion is consistent with our reading of the Bankruptcy Protection Act, the legislative history to that Act, and the relevant case law." *In re Chateaugay Corp.*, 945 F.2d 1205, 1211 (2d Cir. 1991), *cert. denied sub nom. United Mine Workers of America 1974 Ben. Plan and Trust* v. *LTV Steel Co.*, 502 U.S. 1093 (1992).

This decision became final with the denial of *certiorari* by this Court. LTV Steel and its creditors continued negotiation toward a plan of reorganization on the assumption that Wage Agreement liability had been resolved.

The LTV companies were in Chapter 11 for nearly seven years. Over 44,000 proofs of claim, seeking on their face

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1. This statute, which became Section 1114 of the Bankruptcy Code, provides that retiree health benefits provided under an effective contract cannot be abrogated unilaterally by a debtor prior to engaging in bargaining. Contractual obligations which expire by their own terms during a bankruptcy are not extended by the statute.

over $320 billion, were filed. More than two-thirds, or nearly 30,000 of these claims, related to retiree or employee benefits. The claims were filed by thousands of retirees, several unions and retiree trusts, the Pension Benefit Guaranty Corporation, the Department of Labor, and the Internal Revenue Service.

A plan of reorganization was formulated which reflected arduously negotiated agreements among tens of thousands of creditors as to the appropriate allocation of LTV Steel's present and future value. The plan was approved overwhelmingly by LTV Steel's creditors. On June 28, 1993, the plan was confirmed with the consent of all classes of creditors. The plan provides that LTV Steel and related companies will be operated for the foreseeable future principally to pay LTV Steel's massive retiree obligations.

The Coal Act and This Litigation

In late 1992, nearly eight months before confirmation of the plan, Congress passed the Coal Act. The Act codified the obligations created by the Wage Agreements. The Coal Act created the "Combined Fund" as a successor to the trusts established by the Wage Agreements, and transferred the assets of those trusts to the Combined Fund. The Coal Act imposed upon LTV Steel a contribution obligation to the Combined Fund which had a present value of $140 million and was payable over forty years.[2]

The Coal Act became effective on February 1, 1993, and trustees were appointed for the successor fund. These trustees were well aware that the LTV Steel bankruptcy was still pending, and were well aware of the prior litigation to

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2. The Coal Act does not create any public guaranty mechanism, such as the Pension Benefit Guaranty Corporation. The retirees will be paid from the Fund regardless of LTV Steel's participation.

which their privies had been parties. Nevertheless, these trustees made no effort to file claims in the bankruptcy case. Instead, they made a tactical decision to wait and seek payment in full, after the bankruptcy was over. In that way, they hoped to avoid having their claims finally addressed in the Chapter 11 case, along with claims of all other creditors.

LTV Steel commenced this action before confirmation of its plan in order to bring the Combined Fund trustees and their claims into the bankruptcy process. LTV Steel sought a declaratory judgment that the imposition of Coal Act liabilities on LTV Steel would violate the Bankruptcy Code and would also violate the separation of powers doctrine because it would vitiate the prior final judgment holding LTV Steel free of liability for mine worker retiree claims.[3]

The District Court for the Southern District of New York ruled against LTV Steel on all grounds, and the Court of Appeals for the Second Circuit affirmed on all grounds.

The Court of Appeals' Decision

The Court of Appeals holds explicitly that liabilities under the Coal Act arise from pre-petition acts of LTV Steel, yet holds that these liabilities do not constitute ''claims'', as do all other retiree obligations incurred before the bankruptcy filing. The claims of the Combined Fund thus become a new obligation of the reorganized company, while all other similarly situated claims are bound by the terms of the confirmed plan of reorganization.

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3. In addition, LTV Steel challenged the Coal Act on due process and takings grounds. LTV Steel does not concede the correctness of the decision below in any respect but limits its petition for *certiorari* to its challenges based on bankruptcy and separation of powers grounds.

The Court of Appeals recognizes that the Coal Act imposes liability solely based upon prior status as a Wage Agreement signatory and previous employer of mine workers. "The Coal Act triggers current and future liabilities on the basis of past actions, in this case the hiring and firing of workers and the signing of a National Bituminous Coal Wage Agreement." App. A-28. And again, "the Coal Act reinforces the centrality of the employment relationship to the imposition of liability." App. A-35. LTV Steel's liability was found to arise exclusively from its pre-petition acts. Referring to LTV Steel's having signed Wage Agreements from 1950 to 1984, and having employed mine workers from 1950 to the early 1980's, the Court observed that, "LTV has by its own voluntary actions formed the connections and undertaken the responsibilities which now constitute the basis of its liability under the Coal Act." App. A-22.

Although the Court of Appeals expressly finds that Coal Act liability arises directly from pre-petition contracts and labor, the Court of Appeals holds that "[Coal Act premiums] do not constitute the maturation of a right to payment that vested at the time the labor was supplied." App. A-41. The Court finds that LTV Steel made an express pre-petition contract to provide lifetime health benefits, but also finds that no right to payment existed until enactment of the Coal Act. App. A-26, 41.

The Court dismisses the bankruptcy challenge to the Coal Act by concluding that pre-petition contractual liability for retiree benefits is completely distinct from post-petition statutory liability, even though that post-petition liability is based on the same contractual liabilities, for the same benefits, for the same acts of LTV Steel, and for the same labor provided by the mine workers, as was the pre-petition liability. "[T]he existence of a prior contractual liability for retiree health benefits does not render pre-petition the later statutory imposition of retiree health care obligations by Congress." App. A-41. The Court thus fails to adhere to applicable canons of

statutory construction which require harmonious reading of federal statutes, choosing instead to interpret the Coal Act to create a conflict with the Bankruptcy Code.[4]

The Court fails to address either the separation of powers challenge to the Coal Act or the *res judicata* implications of the prior decision that held LTV Steel free of mine worker retiree health claims. The Court framed the question before it as: whether a contract may limit Congress' authority to enact subsequent laws reimposing prior contractual obligations. This issue was not dispositive of the case before the Court. Even if Congress has such power in general, this case involved more than a contract right — it involved a prior adjudication that LTV Steel had no liability. The Court acknowledged that "LTV's contractual liability has been held to have been terminated at the expiration of the 1984 Wage Agreement." App. A-36. It failed, however, to recognize that this final adjudication limits the application of the statute in this case. By deciding that the statute could reimpose liability on LTV Steel, thus reversing a prior final judgment, the Court construed the Coal Act so as to place Congress in Constitutional jeopardy.

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4. The Second Circuit goes to some length to conclude that Coal Act premiums constitute "taxes". App. A-42-44. While LTV Steel does not agree, the point is irrelevant. If, as LTV Steel contends, Coal Act premiums are pre-petition claims under the Bankruptcy Code, then they have been discharged. If they are post-petition liabilities, then they must be paid in full regardless of whether they are taxes or any other post-petition obligation. The "tax" finding is of no consequence.

REASONS FOR GRANTING THE WRIT

The Second Circuit's ruling should be reviewed so that this Court may address an important federal issue on which the circuits have issued sharply conflicting decisions. The issue concerns the definition of "claim", which is the foundation of the Bankruptcy Code. The Second Circuit's decision refuses to treat liabilities based upon pre-petition acts as "claims" under the Bankruptcy Code. Its decision is inconsistent with the decisions of every Court of Appeals, other than the Third Circuit, which have analyzed the scope of the "claim" definition. Finally, its decision is not required by the words of the Coal Act.

The decision also interprets a federal statute in a manner which creates an unnecessary violation of the separation of powers doctrine. The Court of Appeals had previously issued a final judgment that LTV Steel was discharged from liability for health benefits to retired mine workers. No facts have changed since then. No parties have changed since then. No new conduct to form a basis for new liability has occurred since then. New legislation alone is the basis for reversal of the prior final decision.

I. THIS COURT SHOULD ADDRESS THE CONFLICT AMONG THE CIRCUITS CONCERNING THE REACH OF "CLAIM".

The Second Circuit's decision holds that post-petition legislation may reimpose, upon a reorganized debtor, liability arising from pre-petition conduct. The Court's construction places the Coal Act in conflict the Bankruptcy Code's expansive definition of "claim". The language of the Coal Act does not require this result. The Coal Act may plainly be read to create statutory liabilities which, like all other state and federal liabilities, are subject to resolution under the Bankruptcy Code. Nothing in the statute suggests that Congress intended to insulate this liability from treatment as a

bankruptcy claim or to accord it a collection priority in bankruptcy. Governing canons of statutory construction require that, where possible, federal statutes must be read in harmony. *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974).

The Bankruptcy Code's definition of "claim" is crucial to the Code's fundamental policy objective that all claims arising from pre-petition conduct of the debtor be given the same weight for purposes of distributing the debtor's assets. "Equality of distribution among creditors is a central policy of the Bankruptcy Code." *Begier* v. *Internal Revenue Service*, 496 U.S. 53, 58 (1990). Equality may be accomplished only if all claims are brought within the bankruptcy system and all creditors may rely upon equitable treatment within the system.

> "A profound shift in the relationship between debtors and creditors occurs at the filing of a bankruptcy petition. A new estate is created, comprising both the legal and economic interests of the old debtor and the collective economic and legal rights of the creditors. Creditors lose their individual collection rights against the debtor, and they are forced to deal with an estate operating on behalf of all creditors." ELIZABETH WARREN, BUSINESS BANKRUPTCY 61 (1993).

The Bankruptcy Code is carefully designed to prevent strategic behavior which would undercut equality among creditors. The Code imposes a bright line of cleavage between pre- and post-petition claims. Obligations to pre-petition creditors are set at the time of the filing. The automatic stay prohibits post-petition maneuvering to enhance either the value or priority of a claim. 11 U.S.C. § 362. Distribution on claims is governed by a plan of reorganization upon which creditors vote, and the vote of the majority binds the minority. When a plan of reorganization is confirmed, pre-confirmation "debts", defined as liabilities on "claims", are discharged. 11 U.S.C. §§ 1141(d)(1)(A), 101(12). Creditors may not

choose to wait until after reorganization and then seek to exact payment in full on pre-petition claims.

The Bankruptcy Code provides few deviations from the equality principle. The Code enumerates a handful of narrowly drawn priorities for certain claims. *See* 11 U.S.C. §§ 503, 507; *Nathanson* v. *National Labor Relations Board*, 344 U.S. 25, 29 (1952); *In re Colortex Indus., Inc.*, 19 F.3d 1371 (11th Cir. 1994). These limited priorities are granted to classes of claims, such as wage claims. The statute does not permit discrimination among claims within a given class. In particular, the sections providing procedural protections for union and retiree health claims do not treat particular unions or particular groups differently from others. *See* 11 U.S.C. §§ 1113, 1114. No provision of the Bankruptcy Code permits a creditor to avoid the bankruptcy process and demand post-petition payment in full, as the Combined Fund Trustees do here.

The Bankruptcy Code's definition of ''claim'' is the linchpin of the bankruptcy system.

> ''Claim means
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> > (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
> >
> > (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured[.]'' 11 U.S.C. § 101(5).

''Claim'' is defined as broadly as possible. ''By this broadest possible definition . . . the bill contemplates that all legal obligations of the debtor, no matter how remote or

contingent, will be dealt with by the bankruptcy case." H.R. REP. NO. 595, 95th Cong., 2d Sess. 309 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266. *See also Johnson* v. *Home State Bank*, 501 U.S. 78 (1991); *In re A.H. Robins Co.*, 880 F.2d 709, 720 n.13 (4th Cir.), *cert. denied sub nom. Anderson* v. *Aetna Cas. and Sur. Co.*, 493 U.S. 959 (1989).

The purpose of the breadth of the definition of "claim" is to accelerate and equalize all liabilities arising from acts of the debtor before the date of cleavage established by the filing of a bankruptcy petition. This broad definition gives the Bankruptcy Code the power to draw in all parties with whom the debtor dealt pre-petition, and to address all their claims on an equal footing in a single forum. Without this power, some creditors would be preferred, and some injured, by the fortuity of the time at which their claims ripen under non-bankruptcy law.

Most of the Courts of Appeals have held that all liabilities arising from pre-petition acts of the debtor are "claims" under the Code, regardless of their status at the time of the filing. Consistent with this analysis, the Seventh Circuit has ruled that liability under a post-petition statute is barred if pre-petition conduct gave rise to liability under existing pre-petition law. Specifically, that court has held that liability under post-bar date environmental laws is barred when some liability existed before the bar date. *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 3 F.3d 200 (7th Cir. 1993). This decision is informed by years of prior case law interpreting the sweeping words and expansive legislative history of the definition of "claim".

The Second Circuit's decision in this case is contrary to this long line of judicial and legislative authority. The decision instead relies upon *In re Penn Central Transp. Co.*, 944 F.2d 164 (3d Cir. 1991), *cert. denied sub nom. Penn Central Corp.* v. *United States*, 503 U.S. 906 (1992), in which the Third Circuit held that liabilities under the Comprehensive Environmental Response, Compensation and Liability Act of

1980 (''CERCLA'') were not discharged by a 1978 order consummating Penn Central's reorganization because claims under CERCLA, enacted in 1980, ''were not then in existence.'' 944 F.2d at 165.

The *Penn Central* decision derives from an analysis first adopted by the Third Circuit in *In re M. Frenville Co.*, 744 F.2d 332 (3d Cir. 1984), *cert. denied sub nom. M. Frenville Co.* v. *Avellino & Bienes*, 469 U.S. 1160 (1985). There, the Third Circuit interpreted the Bankruptcy Code definition of ''claim'' to read out key words — ''unliquidated'', ''contingent'' and ''unmatured''. *Frenville* held that the determination of whether a liability, there for contractual indemnification, was a pre-petition ''claim'' depended upon whether the liability became ripe before the filing of the petition under applicable non-bankruptcy law.

The *Frenville* analysis was, until now, rejected by every other Circuit. *See Lemelle* v. *Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994) (rejecting *Frenville* analysis and setting forth current state of law regarding scope of ''claim'' in context of tort liability); *In re Hemingway Transp., Inc.*, 954 F.2d 1, 8 n.9 (1st Cir. 1992) (refusing to follow *Frenville* analysis; ''more recent decisions consistently have declined to accept the *Frenville* reasoning and its failure to accord full breadth to the term 'claim'''); *In re Jensen*, 127 B.R. 27, 31 (Bankr. 9th Cir. 1991) (*Frenville* analysis is inconsistent with the broad statutory definition of ''claim'' and ''contravenes'' the overriding goals of the Bankruptcy Code), *aff'd*, 995 F.2d 925 (9th Cir. 1993); *Grady* v. *A.H. Robins Co.*, 839 F.2d 198, 201 (4th Cir.) (Fourth Circuit observes that ''[w]e have found no court outside the Third Circuit which has followed the reasoning and holding of *Frenville*''), *cert. dismissed sub nom. Joynes* v. *A.H. Robins Co.*, 487 U.S. 1260 (1988).

The Second Circuit's ruling has given the *Frenville* analysis new force and has broadened the conflict among the circuits. As noted by the Tenth Circuit, there is a ''split of

authority regarding when a right of payment of an unmatured claim arises for bankruptcy purposes." *Franklin Sav. Ass'n* v. *Office of Thrift Supervision*, 31 F.3d 1020, 1022 (10th Cir. 1994). The decision therefore merits review by this Court.

The concept of "claim" is at the core of bankruptcy legislation and policy. The Second Circuit decision threatens to erode that concept, with serious implications for future bankruptcies in which debtors seek to address liabilities, unmatured under non-bankruptcy law, such as environmental problems or mass torts. The Bankruptcy Code will be an effective tool for restructuring unmatured liabilities, as Congress intended, only if the Bankruptcy Code definition of "claim" is given the scope Congress intended.

II. THIS COURT SHOULD ADDRESS SEPARATION OF POWERS ISSUES RAISED BY THE DECISION.

The Second Circuit's interpretation of the Coal Act creates a violation of the separation of powers doctrine. A prior judgment adjudicating the rights of LTV Steel and privies of the Combined Fund became final in 1992. No new facts exist to give rise to new claims. The only change which has occurred is a change in the law. New legislation may not, however, upset a final judgment.

The parties to the prior litigation, and their privies, are bound by the prior decision. *Res judicata* bars the reassertion of claims already finally decided. "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties." *Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931). *See also Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 398 (1981). The Combined Fund is a successor of, and is in privity with, the prior trust which contested the issue of LTV Steel's liability for

mine worker retiree benefits to the point of a final judgment. These matters are now forever settled among these parties.

Res judicata is not rendered inapplicable by new legislation. On the contrary, the doctrine of separation of powers prohibits Congress from legislatively reversing a final judgment by enacting a new law to be applied to facts already litigated to conclusion. For the legislature to review and reverse a final judgment of the judiciary is a course of conduct prohibited by the Constitution. *Cf. United States* v. *Sioux Nation of Indians*, 448 U.S. 371, 397 (1980) (permitting waiver by the legislature of the government's, but only the government's, *res judicata* rights).

This Court most recently addressed the separation of powers doctrine in *Plaut* v. *Spendthrift Farm, Inc.*, __ U.S. __, 115 S. Ct. 1447 (1995). There, this Court found that a retroactive statute may not require its own application to a case already finally adjudicated, because to do so would violate the separation of powers doctrine. To the extent that a statute requires federal courts to reopen a final judgment entered before its enactment, the statute is unconstitutional.

> "Having achieved finality, . . . a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was." 115 S. Ct. at 1457.

The *Plaut* decision demonstrates the fundamental nature of the separation of powers doctrine. The historic role played in this country's constitutional development by the "sense of sharp necessity to separate the legislative from the judicial power, prompted by a crescendo of legislative interference with private judgments of the courts," is chronicled in the opinion. 115 S. Ct. at 1454. The Federalist Papers set forth

its analytic underpinnings. Very early decisions of this Court established constitutional precedent for the doctrine. *Marbury* v. *Madison*, 1 Cranch 137 (1803). It is not therefore surprising that this Court found that "[a]part from the statute we review today, we know of no instance in which Congress has attempted to set aside the final judgment of an Article III court by retroactive legislation." 115 S. Ct. at 1458.

The Coal Act does not by its terms set aside any prior judgment. There is no indication that Congress intended such a result. But the Second Circuit's interpretation of the Coal Act causes the Coal Act to impose upon LTV Steel exactly the liability that *In re Chateaugay* held that LTV Steel did not have. In *Plaut*, this Court responded to Congressional passage of a statute that by its terms violated of the separation of powers doctrine. In this case, we ask this Court to grant LTV Steel's petition for *certiorari* to affirm that what Congress may not directly effect, no court may accomplish by interpreting a statute to require the same unconstitutional outcome.

CONCLUSION

The decision of the Court of Appeals for the Second Circuit raises two important federal questions. Each merits review by *certiorari*. Petitioners respectfully request that their petition be granted.

Dated: New York, New York
July 14, 1993

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 81 — August Term, 1994

(Argued: December 1, 1994 Decided: April 17, 1995)

Docket No. 94-6024

In Re: CHATEAUGAY CORPORATION,
In Re: REOMAR, INC.,
In Re: LTV CORPORATION,

Debtors;

LTV STEEL COMPANY, INC.;
BCNR MINING CORPORATION;
NEMACOLIN MINES CORPORATION;
TUSCALOOSA ENERGY CORPORATION;

Appellants;

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY, PH.D.; MICHAEL H. HOLLAND, WILLIAM P. HOBGOOD, as Trustees of the United Mine Workers of America Combined Benefit Fund; and UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND,

Appellees.

Before:

MAHONEY, MCLAUGHLIN and HEANEY,*

Circuit Judges.

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* The Honorable Gerald W. Heaney, United States Senior Circuit Judge for the Eighth Circuit, sitting by designation.

Appeals from (1) judgment entered December 14, 1993, in the United States District Court for the Southern District of New York, John S. Martin, Jr., *Judge*, dismissing the complaint of LTV Steel Company, Inc., BCNR Mining Corporation, Nemacolin Mines Corporation, and Tuscaloosa Energy Corporation, and upholding the constitutionality of the Coal Industry Retiree Health Benefit Act (''Coal Act'') under the Due Process and Takings Clauses, and (2) judgment entered May 7, 1993, holding that the Coal Act's contribution requirements were not pre-petition claims disallowed under the Bankruptcy Code due to lack of timely proof of claim, but were taxes incurred by the estate and therefore entitled to administrative priority.

The judgments are affirmed and the case is dismissed.

HEANEY, *Senior Circuit Judge*:

LTV Steel Company, Inc. (''LTV Steel''), and three wholly owned subsidiaries, BCNR Mining Corporation, Nemacolin Mines Corporation and Tuscaloosa Energy Corporation (collectively, with LTV Steel, ''LTV''), appeal from a judgment of the district court encompassing two separate decisions. The first decision held that LTV's obligations under the Coal Industry Retiree Health Benefit Act of 1992 (''Coal Act''), Pub. L. No. 102-486, 106 Stat. 2776, 3036-3056, were not pre-petition claims that must be disallowed under Chapter 11 of the Bankruptcy Code. *In re Chateaugay Corp.*, 154 B.R. 416 (S.D.N.Y. 1993). The second decision rejected LTV's Due Process and Takings Clause attacks on the constitutionality of the Coal Act. *In re Chateaugay Corp.*, 163 B.R. 955 (S.D.N.Y. 1993). We affirm.

I. FACTUAL BACKGROUND

The roots of this controversy stretch back to 1946, when the United Mine Workers of America ("UMWA") launched a strike over the issue of health and pension benefits. When labor/management negotiations collapsed, President Truman invoked his powers under the War Labor Disputes Act and ordered Secretary of the Interior Julius A. Krug to take possession of the nation's mines for one year. *See* Exec. Order No. 9728, 11 Fed. Reg. 5593 (1946); *see also* Exec. Order No. 9758, 11 Fed. Reg. 7927 (1946). Seeking a rapid resumption of production at the idled mines, Krug negotiated with UMWA President John L. Lewis to establish terms and conditions for the period of government control. The resulting Krug-Lewis Agreement established an unprecedented system for providing health and pension benefits to workers at the center of which stood two separate, industry-wide benefit funds. The first, the Welfare and Retirement Fund, was financed by a flat five-cent fee levied on each ton of mined coal and was jointly governed by representatives of the UMWA and the federal government. The second, the Medical and Hospital Fund, depended solely on miner-approved wage deductions and was administered by trustees appointed by the UMWA. The following year, the UMWA and the major mining companies agreed to make permanent the existence of the funds, though in different form. Marking the return of the mines to their corporate owners, the National Bituminous Coal Wage Agreement of 1947 merged the two Krug-Lewis funds into a single entity, the United Mine Workers of America Welfare and Retirement Fund. Perhaps unavoidably, various disputes between the UMWA and the coal operators accompanied the new fund's first several years of operation, generating labor unrest and periodic strikes.

In 1950, a successor National Bituminous Coal Wage Agreement (''NBCWA'') was negotiated by the UMWA and the Bituminous Coal operators Association (''BCOA''), a newly formed multiemployer association of major coal companies.[1] The 1950 Wage Agreement ushered in a two-decade era of labor/management cooperation in the coal industry. In exchange for union acquiescence in the mechanization of mines, the mining companies that signed the 1950 Wage Agreement (''signatory operators'') agreed to establish the United Mine Workers Welfare and Retirement Fund of 1950 (''1950 W&R Fund''), an irrevocable trust funded on a pay-as-you-go basis. As provided in the 1950 Wage Agreement, the purpose of the 1950 W&R Fund was to provide ''benefits to employees of [signatory] Operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness . . . [and] benefits on account of sickness, temporary disability, permanent disability, death or retirement.'' 1950 Wage Agreement, at 136.[2] The UMWA and the BCOA each

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1. The four original members of the BCOA were Jones & Laughlin Steel Corporation (''J&L''), Youngstown Sheet and Tube Corporation (''Youngstown''), Republic Steel Corporation (''Republic''), and Olga Coal Company (''Olga''). Each of these companies was represented on the first BCOA Board of Directors in 1950. In 1984, LTV Steel was formed by the merger of J&L, Youngstown, and Republic; in addition, LTV Steel currently owns the majority interest in Olga.

2. For purposes of simplicity, and where appropriate, we hereafter use the terms ''retiree,'' ''employee'' and ''retired miner'' to include all related qualified beneficiaries, including spouses, widows, and dependents.

named one trustee of the 1950 W&R Fund; those two in turn mutually agreed upon a third, neutral trustee. The trustees exercised sole discretion over the specific nature of the benefits provided by the 1950 W&R Fund. The 1950 Wage Agreement obligated signatory operators to contribute to the 1950 W&R Fund thirty cents per ton of coal mined throughout the life of the agreement.

Until 1971, the successor NBCWAs and related amendments left essentially untouched the operation of the 1950 W&R Fund.[3] The 1971 Wage Agreement removed from the 1950 W&R Fund's trustees the discretion to set benefit levels, vesting the power instead in the hands of the UMWA and the BCOA. Consequently, the scope and operation of the 1950 W&R Fund again became the central issue of the collective bargaining process. The negotiations over the 1974 Wage Agreement generated the first major overhaul of the miners' health and pension benefit delivery scheme. In the wake of court-ordered administrative reforms, *see Lamb* v. *Carey*, 498 F.2d 789 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 869 (1974), and *Blankenship* v. *Boyle*, 329 F. Supp. 1089 (D.D.C. 1971), *aff'd*, 511 F.2d 447 (D.C. Cir.), *cert. denied*, 419 U.S. 869 (1974), significant demographic changes in the population of active and retired miners, and Congress's enactment of the Employee Retirement Income Security Act of 1974 (''ERISA''), 29 U.S.C. § 1001 *et seq.*, the UMWA and

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3. The 1952 amendments raised the signatory operators' contribution to forty cents per ton of coal mined. Also, the 1964 amendments levied a fee of eighty cents per ton of coal purchased by signatory operators from non-UMWA coal mines.

BCOA determined that sweeping changes in the 1950 W&R Fund's administrative mechanisms were necessary. First, the 1974 Wage Agreement divided pension from nonpension benefit funds. The signatory operators' pension obligations under the 1950 W&R Fund were transferred to a new entity known as the UMWA 1950 Pension Trust. Nonpension benefits such as health care were transferred to two separate entities: the UMWA 1950 Benefit Plan and Trust (''1950 Benefit Trust'') and the UMWA 1974 Benefit Plan and Trust (''1974 Benefit Trust''). The 1950 Benefit Trust covered those who retired prior to January 1, 1976; the 1974 Benefit Trust covered later retirees. Because the 1950 Pension Trust received all of the assets of the 1950 W&R Fund, the 1950 and 1974 Benefit Trusts began with a zero funding base. BCOA members and other signatories to the 1974 Wage Agreement committed to fund the 1950 and 1974 Benefit Trusts on the basis of cumulative hours worked, rather than tons of coal mined.

Second, and perhaps most significantly, the 1974 Wage Agreement included an explicit promise that health benefits would be provided to covered retired miners, their spouses, and certain dependents for life. For example, the 1974 Wage Agreement provision for past retirees stated:

> Any pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage.

1974 Wage Agreement, at 99; JA 247.[4] Virtually identical language was applied to future retirees and their widows, disabled miners and their widows, and disabled or retarded children. *Id.* at 99, 101, 103, 105, 106; JA 247, 248, 249, 250, 251. The 1978 Wage Agreement and its successors contained even more explicit language, providing that a miner with at least twenty years of service was "entitled to receive health benefits until death," and "entitled to retain his Health Services Card for life," and that, after the miner's death, his widow was "entitled to receive health benefits until her death or remarriage." 1978 Wage Agreement, at 116, 117, 119, 120; JA 278, 279. Again, similar language applied to disabled miners and their dependents and to disabled and retarded children. *Id.* at 119, 125; JA 279, 282.

Ironically, the 1978 negotiations between the UMWA and BCOA resulted in the partial dismantling of the 1974 benefit scheme. In simplest terms, the parties agreed to shift from a centralized multiemployer benefit trust to a decentralized scheme in which each signatory operator established and financed its own individual health benefit delivery plan. Each post-1975 retiree was assigned to the single-employer plan operated by his or her last employer. Pre-1976 retirees continued to receive their benefits from the multiemployer 1950 Benefit Trust. The 1974 Benefit Trust was also retained, but with the sharply limited mission of providing health benefits to the so-called "orphans": UMWA retirees whose last employer had gone out of business. The mining companies assumed the burden of providing for the "orphaned" retirees as an industry-wide responsibility.

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4. Citations to "JA __" refer to the parties' Joint Appendix.

Unlike the prior NBCWAs, the 1978 Wage Agreement contained a so-called "guarantee" clause:

> **Guarantee of 1950 Plans and Trusts and 1974 Plans and Trusts**
>
> Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the 1950 Pension Fund, the 1950 Benefit Fund, the 1974 Pension Fund, the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this agreement.
>
> In order to fully fund these guaranteed benefits the BCOA may increase, not decrease, the rate of contributions to be made. . . . These contributions, which may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement.

Id. at 113-14; JA 276-77. This clause obligated signatory mine operators to make sufficient contributions to insure payment of the benefits that had been promised for life in the 1974 Wage Agreement, but only until the expiration of that agreement. Signatories to subsequent National Bituminous Coal Wage Agreements were similarly bound.

In addition, the 1978 Wage Agreement added to the 1950 and 1974 Benefit Trusts "evergreen" clauses which provided:

> Any Employer who employed any Participant eligible for coverage under, or who received or receives benefits under, the [1950/1974] Benefit Plan and Trust, or any Employer who was or is required to make, or who has made or makes contributions to the [1950/1974) Benefit

> Plan and Trust, is obligated and required to comply with the terms and conditions of the [1950/1974] Benefit Trust, as amended from time to time, including, but not limited to making the contributions required under the [1978 Wage Agreement], as amended from time to time, and any successor agreements thereto.

The D.C. Circuit has interpreted these clauses to require coal mine operators who signed the 1978 or a subsequent Wage Agreement and who continue to operate in the mining industry "to contribute to the trusts at the rates specified in the current NBCWA, irrespective of the employer's failure [to] sign that NBCWA." *UMWA 1974 Pension* v. *Pittston Co.*, 984 F.2d 469, 473 (D.C. Cir.), *cert. denied*, 113 S. Ct. 3040 (1993). The effect of the *Pittston* decision was to prevent still active coal companies from avoiding their contribution responsibilities by signing "nonconforming" agreements with the UMWA instead of joining a successor NBCWA.

Through its corporate predecessors, LTV played a central role in the negotiation and implementation of the various NBCWAs and was signatory to each NBCWA through 1984. Olga, Nemacolin, BCNR and Tuscaloosa were signatories through 1984, J&L through 1981, and Youngstown and Republic through 1978.

By the late 1980s, the retiree benefit plans had sunk into deep financial crisis. The sources of the crisis were varied and complex. First, during the 1980s the number of employers contributing to the 1950 and 1974 Benefit Trusts declined, while the number of "orphaned" beneficiaries—that is, those whose former employers no longer made contributions—increased. Following a series of court decisions, the 1974 Benefit Trust found itself liable for the health benefits of a substantially greater population of retirees than its architects

had anticipated. *See District 29, United Mine Workers of America* v. *Royal Coal Co.* (''*Royal Coal I*''), 768 F.2d 588 (4th Cir. 1985); *District 29, United Mine Workers of America* v. *UMWA 1974 Benefit Plan & Trust* (''*Royal Coal II*''), 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988); *United Mine Workers of America* v. *Nobel*, 720 F. Supp. 1169, 1176 (W.D. Pa. 1989), *aff'd*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991). With these cases, signatory operators secured their right to discontinue their individual employer health plans by declining to sign a successor Wage Agreement, thereby shifting the cost of their retirees' health benefits onto the shoulders of the 1974 Benefit Trust. Specifically, the *Royal Coal/Nobel* line of cases established that the 1974 Benefit Trust bore the responsibility of providing health benefits not only to retirees whose former employers had gone out of business, but also to those whose former employers remained in business but had ceased mining operations. In *Royal Coal I*, 768 F.2d at 592, the Fourth Circuit held that a signatory operator's obligation to contribute to the 1974 Benefit Trust ceased with the expiration of the Wage Agreement then in effect. Conversely, in *Royal Coal II*, 826 F.2d at 283, the Fourth Circuit held that the 1974 Benefit Trust could not disclaim sole liability for the health benefits of ''orphans,'' even when their former employers, having left the bituminous coal mining industry, remained financially healthy and capable of making contributions. This latent loophole was embodied in the 1950 and 1974 Benefit Trusts' funding mechanisms, which calculated contributions according to the number of tons of coal mined or the number of hours worked by an operator's miners. When a company ceased mining operations, the Benefit Trusts' financing formula calculated a required contribution of zero. Until the 1988 Wage Agreement, no prefunding requirement or withdrawal liability was imposed on employers who declined to

sign a new NBCWA upon the termination of the old.

Second, as throughout American industry, the costs of health care rose steeply. Between 1980 and 1990, the total cost of health care benefits paid by the 1950 and 1974 Benefit Trusts doubled from $117.4 million to $245.3 million. In short, an ever-smaller number of mining companies incurred the increasing costs of providing benefits to ever-greater numbers of retirees.

In 1986, LTV became part of this exodus from the mining industry. Along with over fifty subsidiaries and affiliates, LTV filed for protection under Chapter 11 of the Bankruptcy Code on July 17, 1986. The Federal Reporters abound with the fallout from LTV's bankruptcy, and we need not recount its history here. *See, e.g., In re Chateaugay Corp.*, 10 F.3d 944 (2d Cir. 1993); *In re Chateaugay Corp.*, 988 F.2d 322 (2d Cir. 1993); *In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *In re Chateaugay Corp.*, 961 F.2d 378 (2d Cir. 1992); *In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied*, 502 U.S. 1093 (1992); *In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir. 1991); *In re Chateaugay Corp.*, 930 F.2d 245 (2d Cir. 1991); *In re Chateaugay Corp.*, 928 F. 2d 63 (2d Cir. 1991), *cert. denied*, 502 U.S. 1093 (1991); *In re Chateaugay Corp.*, 924 F.2d 480 (2d Cir. 1991). For our purposes, it is sufficient to note that after the expiration of the 1984 Wage Agreement in 1988, LTV successfully sued to establish that the 1974 Benefit Trust, and not LTV, was responsible for providing health benefits to LTV's retired former employees, their widows and dependents. *See In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied*, 502 U.S. 1093 (1991). Focusing on the phrase "during the term of this agreement" contained in the guarantee clauses and elsewhere, this court held that a given NBCWA's contribution requirement did not extend beyond the agreement's

expiration date. *Id.* at 1209. By departing the coal industry for other endeavors or going out of business entirely, companies like LTV could jettison their retirees into the Benefit Trusts and obtain full legal absolution of the responsibility to fund health benefits for their own former miners. Because the UMWA and BCOA had agreed that the Benefit Trusts should provide health benefits to retirees whose last employers had gone out of business, LTV also succeeded in unloading its share of the cost of health benefits for the truly "orphaned" retirees.

By the beginning of the 1990s, the Benefit Trusts had reached an untenable state of financial crisis. The looming insolvency of the Benefit Trusts spurred significant labor strife in the coal fields, culminating in an eleven-month strike against the Pittston Coal Company in 1989. After failed attempts at collective bargaining by the UMWA and Pittston, the Secretary of Labor intervened and brokered a settlement. Responding to the prospect of continuing disruptions in the nation's coal fields, the Secretary created the Advisory Commission on United Mine Workers of America Retiree Health Benefits ("Coal Commission") to diagnose the problem and propose a long-term solution.

In November 1990, the Coal Commission submitted its findings and recommendations to the Secretary. *See Coal Commission Report: A Report to the Secretary of Labor and the American People* (Nov. 1990), JA 393. At the heart of the Coal Commission's report was the following finding:

> Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy.

Coal Comm. Rpt., at 1, JA 405. Reviewing the 1950 and 1974 Benefit Trusts' funding crisis, the Commission predicted that, absent legislative action, the trusts would run a combined deficit of $300 million in 1993. *Id.* at 3, JA 407.

The Coal Commission recommended that all companies signatory to at least one NBCWA, whether or not they continue to engage in mining, should bear the cost of providing health benefits to their own retired miners. Also, the Coal Commission recommended that current and former signatory operators collectively share the cost of the ''orphaned'' retirees. In the Commission's view, the fairest method of financing health care for retired miners would combine several key features:

> [T]he imposition of a statutory obligation to contribute on current and past signatories, mechanisms to prevent future dumping of retiree health care obligations, authority to utilize excess pension assets and the implementation of state-of-the-art managed care and cost containment techniques.

Id. at 60, JA 464.

After two years of study and deliberation, Congress responded to the Coal Commission's report by enacting the Coal Act, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56 (codified at 26 U.S.C. §§ 9701-9722). The essential thrust of the Coal Act is ''to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to [coal miner] retirees.'' *Id.*, § 19142(a)(2), 106 Stat. at 3037. In other words, the Coal Act requires each current and former signatory operator to pay for its own retirees and to share in the cost of the ''orphaned'' retirees. As to the benefit delivery vehicle, the policy of the Coal Act is ''to provide for the continuation of a privately

financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.'' *Id.*, § 19142 (b)(1) and (3), 106 Stat. at 3037.

The Act merged the existing 1950 and 1974 Benefit Trusts into a new private trust fund, the UMWA Combined Benefit Fund (''Combined Fund''). 26 U.S.C. § 9702. Only those retirees actually receiving benefits from the Benefit Trusts as of July 20, 1992, were declared eligible to receive benefits from the Combined Fund. *Id.*, § 9703(f). In allocating financial responsibility for costs of the Combined Fund, Congress determined that ''those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements.'' 138 Cong. Rec. S17,603 (daily ed. Oct. 8, 1992) (reproducing proposed conference committee report). Accordingly, Congress directed the Secretary of Health and Human Services to levy annual health insurance and death benefit premiums on each ''assigned operator.'' 26 U.S.C. §§ 9704, 9705. An ''assigned operator'' was defined as a signatory to any NBCWA since 1950. *Id.*, § 9701 (c) (5) . The Secretary of Health and Human Services ''assigned'' each beneficiary to the signatory operator for whom he or she most recently worked when possible, otherwise to the signatory operator that longest employed the beneficiary. *Id.*, § 9706. Where the signatory operator is no longer in business, the liability for its beneficiaries passes to ''related persons,'' such as successors in interest. *Id.*, §§ 9704(a), 9701(c)(2). The costs of providing health care benefits to the remaining unassigned ''orphans'' were divided among the assigned operators in proportion to their share of the assigned beneficiaries. *Id.*, § 9704.

In sum, the annual premium for an assigned operator equals the sum of the cost of providing health benefits to the company's assigned beneficiaries, its *pro rata* share of death benefit coverage, and its *pro rata* share of the cost of health benefits for "orphaned" beneficiaries. The Coal Act restricts liability for medical benefit premiums to companies that (1) signed one or more Wage Agreements between 1950 and 1988, (2) continue to "conduct[ ] or derive[ ] revenue from any business activity, whether or not in the coal industry," and (3) actually employed at least one retiree currently receiving benefits. *Id.*, § 9701(c).

To mitigate the financial burden on the coal companies, the Coal Act authorized the transfer to the Combined Fund of certain surplus funds accumulated by the UMWA 1950 Pension Plan and the Abandoned Mine Reclamation Fund. Over the first two years of the Combined Fund's operation, the Coal Act directed that $210 million be transferred from the 1950 Pension Fund. As a practical matter, the transfers from the 1950 Pension Plan have entirely eliminated the unassigned "orphan" and death benefit assessments for the first two fiscal years of the Combined Fund's operation. *See* Declaration of Donald E. Pierce, Jr., at 5, JA 607. Beginning in 1995, transfers from the Abandoned Mine Reclamation Fund will reduce the coal companies' liability for unassigned beneficiaries by up to $70 million each year through 2004. 26 U.S.C. § 9705(b); 30 U.S.C. § 1232(h). To enforce compliance, the Coal Act authorized the Secretary of the Treasury to impose penalties in the nature of taxes on companies failing to meet their obligations under the Act. *See* 26 U.S.C. § 9707.

The Coal Act became effective on February 1, 1993. For the first full fiscal year, beginning October 1, 1993, LTV was assigned a total of 5,667 beneficiaries, or roughly 7% of the 79,650 Combined Fund assigned beneficiaries. Pierce Declaration at 4, JA 606. The total premium to be paid by LTV that year was $12,727,118.61. *Id.* at 2, 4, JA 604, 606. By fully covering both the health benefit premiums for the 25,565 unassigned beneficiaries and the death benefit premiums for all beneficiaries, the first $70 million transfer from the 1950 Pension Fund effectively reduced LTV's per beneficiary premium by 18%. *Id.* at 2, JA 604. After the transfers, the total premiums to be collected by the Combined Fund from all assigned operators in its first full fiscal year of operation totalled $178,880,359.50. Memorandum from Donald E. Pierce, Jr., to LTV Corp., at 1, JA 610.

LTV filed this action on January 23, 1993. The complaint raises both constitutional and bankruptcy law attacks on the validity of the Coal Act as applied to LTV. First, LTV alleges that the Coal Act violated its Fifth Amendment substantive due process rights and that it constituted a taking of private property for public use without just compensation. Second, LTV claims that its Coal Act premiums are prepetition claims that must be disallowed under applicable bankruptcy law. In two separate decisions, the district court rejected LTV's claims and dismissed the complaint. *See In re Chateaugay Corp.*, 154 B.R. 416 (S.D.N.Y. 1993); *In re Chateaugay Corp.*, 163 B.R. 955 (S.D.N.Y. 1993). LTV appeals from the district court's judgments, and we affirm.

II. CONSTITUTIONALITY OF COAL ACT

LTV alleges two constitutional deficiencies in the Coal Act: first, that the Act violates the Due Process Clause, and second, that the Act constitutes a taking of private property for public use without just compensation.

A. Due Process

Under the due process standards set forth by the Supreme Court, we review laws "adjusting the benefits and burdens of economic life" for arbitrariness and irrationality. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). Because it burdens no fundamental rights, the Coal Act is "a classic example of an economic regulation" and is subject only to the minimum scrutiny rational basis test. *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 83 (1978). Substantive due process requires only that economic legislation be "supported by a legitimate legislative purpose furthered by a rational means." *Pension Benefit Guarantee Corp.* v. *R. A. Gray & Co.*, 467 U.S. 717, 729 (1984). Because LTV does not quarrel with the legitimacy of Congress's purpose in enacting the Coal Act, we need decide only whether the means chosen are "demonstrably arbitrary or irrational." *Duke Power*, 438 U.S. at 83-84.

The doctrinal landscape which confronts LTV's due process challenge encompasses unusually inhospitable legal terrain. Since its decision in *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U.S. 330 (1935), the Supreme Court has proven reticent to involve itself in decisions about economic policy. We are aware of no post-1935 cases in which the Supreme Court invalidated an economic regulation on substantive due process grounds. On the contrary, the Court's posture has been one of deference to Congress's

economic policy prerogatives. *See, e.g., Concrete Pipe & Prods.* v. *Construction Laborers Pension Trust*, 113 S. Ct. 2264 (1993) (upholding retroactive effect of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act); *General Motors Corp.* v. *Romein*, 112 S. Ct. 1105, 1112 (1992) (upholding retroactive legislation affecting Michigan's compensation benefits law); *United States* v. *Sperry Corp.*, 493 U.S. 52 (1989) (upholding retroactive effect of federal legislation with respect to the costs of an international claims tribunal); *PBGC* v. *R.A. Gray & Co.*, 467 U.S. 717 (1984) (upholding retroactive effect of federal legislation imposing liability for withdrawal from pension plans); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) (upholding retroactive effect of federal law imposing liability on coal mine employers for employee disabilities caused by black lung disease); *see also Galvan* v. *Press*, 347 U.S. 522 (1954) (upholding retroactive application of federal legislation concerning immigration and deportation of aliens); *Chase Sec. Corp.* v. *Donaldson*, 325 U.S. 304 (1945) (upholding repeal of statute of limitations which deprived defendant of his sole defense); *Paramino Lumber Co.* v. *Marshall*, 309 U.S. 370 (1940) (upholding legislation that reopened a workers' compensation proceeding after the time for judicial appeal had expired). In spite of this unbroken chain of unsuccessful due process challenges, LTV argues that *Alton* controls the disposition of this case. LTV also attempts to distinguish the post-*Alton* cases to demonstrate that the Coal Act, unlike all other economic legislation reviewed by the Court since 1935, tips the scales of arbitrariness and irrationality. On both counts we find LTV's arguments unavailing.

In *Alton*, the Supreme Court struck down a statute requiring railroad carriers to provide pension benefits to recently

retired employees. While *Alton* has never been expressly overruled, courts over many years have expressed doubts about its continuing validity. *See, e.g., Peick* v. *Pension Benefit Guar. Corp.*, 724 F.2d 1247, 1266 (7th Cir. 1983), *cert. denied*, 467 U.S. 1259 (1984) (''The Court's method of analysis in *Turner Elkhorn Mining* represents a fundamental shift from that employed in *Alton Railroad*.''); *A-T-0, Inc.* v. *Pension Benefit Guar. Corp.*, 634 F.2d 1013, 1025 n.13 (6th Cir. 1980) (''[W]e . . . question the continued vitality of the Supreme Court's reasoning in [*Alton*].''); *Chew* v. *E. R. Quesada*, 182 F. Supp. 231, 232 (D.D.C. 1960) (''The evidence is overwhelming that *Alton* is no longer controlling law.''). In both letter and spirit, *Alton* belongs to the long-discredited era of *Lochner*-style judicial activism. *See Lochner* v. *New York*, 198 U.S. 45 (1905). That is, *Alton* was decided prior to the Court's 1937 abandonment of intrusive judicial scrutiny of economic legislation under the rubric of substantive due process. *See West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *United States* v. *Carolene Prod. Co.*, 304 U.S. 144 (1938). *See generally* Bruce A. Ackerman, *We the People: Foundations*, 48-50 (1991); Morton J. Horowitz, *The Warren Court and the Pursuit of Justice*, 50 Wash. & Lee L. Rev. 5, 5 (1993) (''[T]he New Deal Revolution of 1937 . . . fundamentally altered the relationship between the federal government and the states and between the government and the economy.''). Beginning with *West Coast Hotel*, due process review has metamorphosed into a creature of a different stripe. For example, the ''presumption of constitutionality'' which now attaches to all ''legislative Acts adjusting the burdens and benefits of economic life,'' *Turner Elkhorn*, 428 U.S. at 15, was absent from the *Alton* Court's analysis. Indeed, in *Gray*, 467 U.S. at 733, the Supreme Court itself expressly declined a litigant's invitation to ''resuscitate'' the *Alton* holding. As it had earlier done in *Turner Elkhorn*, 428

U.S. at 19, the Court instead "[a]ssum[ed]" that *Alton* "'retains vitality' despite the changes in judicial review of economic legislation that have occurred in the ensuing years," and then proceeded to distinguish the case on its facts. 467 U.S. at 733.

We need not attempt here a definitive measurement of *Alton*'s jurisprudential vital signs because the provisions of the Coal Act are easily distinguishable from those of the Railroad Retirement Act. First, the *Alton* Court found that the pre-enactment railroad retirees, who became eligible for employer-funded pensions under the Railroad Retirement Act, had retired without any expectation, legitimate or otherwise, of receiving pension benefits. 295 U.S. at 349. The Court held that "this requirement . . . imposes for the future a burden never contemplated by either party when the earlier relation existed or when it was terminated." *Id.* By contrast, every court to examine the 1974 and subsequent Wage Agreements has concluded that they created a legitimate expectation of lifetime health benefits for retired miners. As this court observed in *Chateaugay*, 945 F.2d at 1210, retired coal miners "are guaranteed provision of health benefits for life under the collective bargaining agreement." *Accord Royal Coal II*, 826 F.2d at 282 ("At the outset of our analysis we note that we agree with the district court's conclusion that the intentions of the parties in providing for retirement health benefits was to guarantee their provision for life."); *Nobel*, 720 F. Supp. at 1178 ("We find that the language [of the Wage Agreements] confers a right to benefits for the lifetime of the pensioner."). In *Barrick Gold Exploration, Inc.* v. *Hudson*, 823 F. Supp. 1395, 1405 (S.D. Ohio 1993), *aff'd*, 47 F.3d 832 (6th Cir. 1995), the court found that the Wage Agreements "promised lifetime health benefits to miners." In *Templeton Coal Co., Inc.* v. *Shalala*,

855 F. Supp. 990, 1003 (S.D. Ind. 1993), the court upheld the constitutionality of the Coal Act even as applied to companies who signed only pre-1974 Wage Agreements:

> Congress is well within its authority in viewing the history of collective bargaining in the mining industry to determine that operators like these Plaintiffs created an atmosphere that promised lifetime health benefits to those who would retire from the industry. In return, such operators received labor at the time.

Consistent with such findings, the Coal Commission rested its legislative recommendations upon the premise that a legitimate expectation of lifetime health benefits had been created. Coal Comm. Rpt. at vii, 1, JA 397, 405. Accordingly, we hold that, unlike the provisions challenged in *Alton*, the Coal Act operates to enforce a legitimate expectation generated by the parties in the course of their voluntary contractual relationship.

Second, the *Alton* Court's finding of irrationality derived in large part from its finding that, by making benefits available to all those employed by a railroad during the year preceding the statute's enactment, the Railroad Retirement Act extended pensions "to thousands who have been unfaithful and for that cause have been separated from the service, or who have elected to pursue some other calling, or who have retired from the business, or who have been for other reasons lawfully dismissed." 295 U.S. at 349. The Court believed that providing pensions to such persons could not "in reason or common sense" be said to advance the statute's objective of promoting "efficiency or safety in the future operation of the railroads." *Id.* The Court complained that "as to some of the railroad companies [the Railroad Retirement Act] constitutes a naked appropriation of private property upon the basis of

transactions with which the owners of the property were never connected.'' *Id.* at 350. By contrast, under the Coal Act eligibility for health benefits extends only to those miners who accumulated twenty years of classified labor in the coal industry or who were disabled in the course of their employment. Unlike the Railroad Retirement Act, the Coal Act links operator liability to previous employment relationships by assigning beneficiaries to their former employers where possible. As a signatory to the 1974 and subsequent Wage Agreements, LTV joined in the mining industry's collective assumption of responsibility for the ''orphaned'' retirees' benefits. Having negotiated over and contributed to the 1974 Benefit Trust for over a decade, LTV cannot now insist that it was never connected with the problem of the ''orphans.'' Unlike the employers in *Alton*, LTV has by its own voluntary actions formed the connections and undertaken the responsibilities which now constitute the basis of its liability under the Coal Act. In light of these critical distinctions between *Alton* and the case before us, we conclude that *Alton* is not controlling.

We turn then to an assessment of LTV's claims under the post-*Alton* economic regulation cases. LTV claims that it is arbitrary and irrational to require a former party to time-limited contracts, whose obligations have been fulfilled and terminated, to now finance the provision of lifetime health benefits not only to former employees but also to a number of retired miners who at no time worked for LTV. Absent the Coal Act, LTV argues that both it and the UMWA miners got what they bargained for: The miners got contributions to the Benefit Trusts during the term of the agreement, and LTV got the right to withdraw from the system upon the expiration of the 1984 Wage Agreement. With the Coal Act, says LTV, the government has not merely rewritten our old contracts with

our own former employees, it has created from whole cloth entirely new contracts obligating us to provide lifetime health benefits to retirees we never employed. In short, LTV argues, Congress's retroactive construction of new liabilities on the rubble of past acts violates the Due Process Clause, particularly where the parties involved have already fulfilled their contractual obligations to one another.

We agree with LTV's contention that the Coal Act has some retrospective effect. To some degree, the Coal Act "upsets otherwise settled expectations," and "impose[s] a new duty or liability based on past acts." *Turner Elkhorn*, 428 U.S. at 16. As LTV points out, "[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *General Motors Corp.* v. *Romein*, 112 S. Ct. at 1112. Yet it is equally clear that the presence of some retroactivity in no way alters our deferential standards of review. As a unanimous Court held in *Gray*, 467 U.S. at 729:

> [T]he strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.

The Court has cautioned that "[t]he retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former," suggesting that, for example, theories of deterrence and punishment may be insufficient to

justify the retrospective imposition of liability. *Turner Elkhorn*, 428 U.S. at 17. Nevertheless, the governing standard of review in this case remains that of arbitrariness and irrationality.

In *Turner Elkhorn*, coal miners challenged the constitutionality of provisions of the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901-45, that required operators to pay benefits to miners who contract pneumoconiosis and their survivors even if the miners had ceased employment in the coal industry before the effective date of the Act. 428 U.S. at 8-10. As in this case, the plaintiffs in *Turner Elkhorn* argued that the Due Process Clause prevented Congress from requiring them to assume responsibility for the former miners, individuals whose work in the industry had terminated prior to the passage of the statute and who had never been promised any of the benefits the operators were required to fund under the statute. The Court held that:

> the imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor [--] the operators and the coal consumers.

428 U.S. at 18. As the Court noted elsewhere, "[i]t is surely proper for Congress to legislate retrospectively to ensure that the costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *Sperry*, 493 U.S. at 64-65 (upholding retroactive effect of legislation permitting deduction of user fee from awards of United States-Iran Tribunal).

In *Gray*, the Court considered a due process challenge to the retroactive application of the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §§ 1381-1461

(''MPPAA''), a statute requiring employers withdrawing from multiemployer pension plans to pay their *pro rata* share of the plan's vested unfunded liabilities. The Court concluded that Congress was ''eminently rational'' in imposing the MPPAA's obligations retroactively in order that employers who withdrew from plans during consideration of the proposed legislation would not thereby achieve any advantage. 467 U.S. at 730-31. In 1993, the Supreme Court in *Concrete Pipe* again upheld the MPPAA against a challenge that it improperly imposed withdrawal liability upon an employer who had contributed to a pension plan prior to the enactment of the statute and who had terminated its contractual liability for additional contributions. *See* 113 S. Ct. at 2274-75. The Court quoted its holding in *Gray* that ''legislation readjusting rights and benefits is not unlawful solely because it upsets otherwise settled expectations,'' *id.* at 2287, and reaffirmed that the statute was ''subject to due process review only for rationality,'' *id.* at 2289.

LTV's efforts to distinguish *Turner Elkhorn*, *Gray*, and *Concrete Pipe* are unpersuasive. In essence, LTV suggests that the rational bases accepted by the Court in those cases constitute a closed set of permissible justifications. On the contrary, these cases all reiterate the principle that retrospective cost-spreading statutes must be upheld if there exists a rational connection between a legitimate legislative purpose and the chosen statutory means.

We have no difficulty discerning in the Coal Act a rational scheme to achieve a legitimate legislative purpose. As the district court below accurately noted, the critical flaw in LTV's claim ''that there is no rational relationship between its past payments for its former employees' health benefits and the requirement that it now pay for those benefits, and those of certain orphan beneficiaries, for the balance of those

beneficiaries' lives, is that at least between 1974 and 1986, LTV was signatory to a series of NBCWAs that included language that gave retired coal miners a legitimate expectation of lifetime health benefits.'' *In re Chateaugay*, 163 B.R. at 963. LTV's Coal Act liability arises out of an untenable situation of LTV's own making. With one hand, LTV promised the coal industry's miners that they would receive health care benefits for life. With the other hand, LTV secured a contractual ability to leave the coal industry, unload its retirees into the 1974 Benefit Trust, and thereby free itself of financial responsibility for the fulfillment of its promise. By exercising that contractual right and ''orphaning'' its retirees in 1986, LTV became a prime contributor to the financial crisis in the Benefit Trusts. The district court stated it well:

> While LTV might well have expected that other coal operators would be required to pay for those benefits after LTV left the coal mining industry, LTV also could reasonably have anticipated that the 1950 and 1974 Benefit Trusts would not be able to support the financial burdens imposed upon them as a result of escalating health care costs, the aging of the beneficiary population and the ''dumping'' of beneficiaries into the 1974 Benefit Trust, both by companies going out of business totally and companies who, like LTV, ceased coal mining operations but remained in business in other industries.

Id.

We find eminently rational Congress's decision to apportion liability for the promised lifetime health benefits among all the companies that collectively made the promise. *Cf. National R.R. Passenger Corp.* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 477 (1985) (Congress acted

rationally in requiring private railroads to pay a portion of the cost of rail travel passes provided to railroad employees by Amtrack in part because "the railroads, rather than the taxpayers, were responsible for the creation of the moral obligation" to provide such privileges). As an entity that benefited directly from the effect of that promise on the availability and quality of UMWA labor, LTV cannot now maintain that Congress acted arbitrarily in assigning to LTV a proportional share of the future cost of fulfilling that promise.

In light of the mounting crisis in the UMWA benefit trusts, the resulting strikes and disruptions in the coal fields, and the very real danger that 200,000 retirees would fall onto government assistance unless the coal industry were held to its earlier promises of lifetime health benefits, we hold that Congress acted neither arbitrarily nor irrationally by shifting the burden of the crisis onto those most responsible for creating it. Nor do we find evidence of arbitrariness or irrationality in the Coal Act's formulas for assigning retirees to former employers and for calculating *pro rata* shares of death benefits and unassigned retiree benefits. Our conclusion is buttressed by Congress's provision of mitigating transfers that first eliminate and then substantially reduce LTV's liability for retired miners that LTV never employed.

LTV separately argues that the Coal Act is arbitrary or irrational due to its "unprecedented degree of retroactivity." LTV Br. at 31. The proposition that the Due Process Clause imposes a time limit on a law's retrospective effect elicits no support from the case law and runs afoul of the numerous decisions upholding the constitutionality of the unlimited retrospective temporal reach of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9657. *See, e.g., United States* v. *Monsanto Co.*, 858 F.2d 160, 173-74 (4th Cir.

1988), *cert. denied*, 490 U.S. 1106 (1989); *United States* v. *Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d 726, 741 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987); *United States* v. *Hooker Chems. & Plastics Corp.*, 680 F. Supp. 546, 556 (W.D.N.Y. 1988). We do not agree that the scope of the retrospective effect associated with the Coal Act is "unprecedented," or even notably great. As with CERCLA and the Black Lung Benefits Act upheld in *Turner Elkhorn*, the Coal Act triggers current and future liabilities on the basis of past actions, in this case the hiring and firing of workers and the signing of a National Bituminous Coal Wage Agreement. The Coal Act contains no requirement that signatory operators pay for health benefits delivered prior to the effective date of the statute. Thus, the financial impact of the Coal Act on assigned operators is strictly prospective: only the weight and duration of the funding burdens vary according to past acts. Our review of the record convinces us that the degree of retrospective effect imposed on LTV by the Coal Act is commensurate with LTV's share of responsibility for the coal miner retiree health benefit crisis as rationally apportioned by Congress. In any event, we find no support for LTV's argument that the Coal Act's "degree of retroactivity" violates the Due Process Clause.

B. *Takings Clause*

We agree with the district court that its exercise of jurisdiction over LTV's Takings Clause claim was proper pursuant to 28 U.S.C. § 1331(a). We find no merit to the government's suggestion that the Tucker Act, 28 U.S.C. § 1491 (a), acts to remove from the federal district courts jurisdiction over an action for declaratory relief where no money damages have been requested. The Tucker Act vests original jurisdiction over suits seeking compensation from the United States under

the Constitution in the United States Court of Federal Claims. The jurisdiction of the Federal Claims Court over such actions is exclusive, except that the federal district courts have concurrent jurisdiction over cases in which the amount in controversy is less than $10,000. *See* 28 U.S.C. § 1346(a)(2). The jurisdiction of the Claims Court depends entirely upon the presence of a claim for money damages. *See Gentry* v. *United States*, 546 F.2d 343, 355 (Cl. Ct. 1976) (''Our authority to issue a declaratory judgment is limited . . . . We are authorized to do so only where 'it is tied and subordinate to a monetary award.' '') (quoting *Austin* v. *United States*, 206 Ct. Cl. 719, 723, *cert. denied*, 423 U.S. 911 (1975)); *Kennedy* v. *United States*, 19 Cl. Ct. 69, 75 (Cl. Ct. 1989) (dismissal is required where the relief sought is other than monetary compensation). Thus, the question of jurisdiction in this case masks a broader question of ripeness: Can a takings claim ever be brought in a district court without first seeking compensation in the Court of Federal Claims?

On their face, the Supreme Court's decisions on federal Takings Clause jurisdiction have not been consonant. Certain *obiter dicta*, if taken literally, would preclude our jurisdiction over LTV's takings claim on grounds of ripeness. *See First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U.S. 304, 314 (1987) (The Fifth Amendment ''does not prohibit the taking of private property, but instead places a condition on the exercise of that power.''); *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 195 (1985) (''[T]akings claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act.''); *Preseault* v. *Interstate Commerce Comm'n*, 494 U.S. 1, 11 (1990) (The Takings Clause is satisfied when at the time of the taking the government makes available a ''reasonable,

certain and adequate provision for obtaining compensation'' (internal quotations and citations omitted).); *see also Regional Rail Reorganization Act Cases*, 419 U.S. 102, 126 (1974) (To determine whether a district court has jurisdiction over a statutory takings claim, the proper inquiry is not whether the statute ''expresses an affirmative showing of congressional intent to permit recourse to a Tucker Act remedy,'' but rather ''whether Congress has in the [statute] withdrawn the Tucker Act grant of jurisdiction to the [Claims Court] to hear a suit involving the [statute] 'founded . . . upon the Constitution' ''); *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1019 (1984) (District court jurisdiction over takings claims requires a demonstration of Congress's ''unambiguous intention to withdraw the Tucker Act remedy.''). Yet in *Duke Power*, the Court appears to have explicitly endorsed district courts' exercise of jurisdiction over declaratory judgment actions founded on the Takings Clause, even when no prior attempt to secure compensation in the Federal Claims Court has been made.[5] Consistent with the latter approach, the

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5. In *Duke Power*, a case concerning a statutory limit on utility liability for nuclear disasters, the Court stated:

> Mr. Justice Rehnquist [in dissent] suggests that appellees' ''taking'' claim will not support jurisdiction under § 1331(a), but instead that such a claim can be adjudicated only in the Court of Claims under the Tucker Act. We disagree. Appellees are not seeking compensation for a taking, a claim properly brought in the Court of Claims, but are now requesting a declaratory judgment that since the [challenged statute] does not provide advance assurance of adequate compensation in the event of a taking, it is unconstitutional. As such, appellees' claim tracks quite closely that of the petitioners in the *Regional Rail Reorganization Act Cases* . . . which were brought under § 1331 as well as the Declaratory Judgment Act. . . .

Court has in several recent cases adjudicated takings claims on appeal from district courts without reference to Tucker Act jurisdiction or a finding of "unambiguous" Congressional intent to withdraw it. *See Concrete Pipe*, 113 S. Ct. at 2289-92; *Connolly* v. *Pension Benefit Guarantee Corp.*, 475 U.S. at 211, 221-28 (1986). Thus, we are left with the task of reconciling the broad jurisdictional statements of *Preseault*, *Williamson County*, and *Monsanto* with the more specific language of *Duke Power* in light of the Court's actual exercise of jurisdiction in *Concrete Pipe* and *Connolly*. We resolve this apparent inconsistency by looking not so much to what the Supreme Court has said, but to what it has done. We conclude that a distinction must be drawn between (a) statutes burdening real and tangible property, and (b) those requiring direct transfers of money to the government. The jurisdictional ripeness analysis must take account of the nature of the alleged statutory taking. The *Williamson County/Preseault* approach — that is, withholding district court jurisdiction on grounds of ripeness until a plaintiff shows that a claim for compensation in the Federal Claims Court has been or would be unsuccessful — has been applied only where real or tangible property was physically invaded, regulated, or otherwise

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> While the Declaratory Judgment Act does not expand our jurisdiction, it expands the scope of available remedies. Here it allows individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.

438 U.S. at 71 n.15 (citations omitted).

burdened by legislative action. As the Court's exercise of jurisdiction in *Connolly* and *Concrete Pipe* makes clear, however, different rules apply to statutes mandating financial contributions to benefit funds. We hold that where the challenged statute requires a person or entity to pay money to the government, it must be presumed that Congress had no intention of providing compensation for the deprivation through the Tucker Act. Common sense dictates such a presumption. For example, in the case of the Black Lung Act, which required mining companies to contribute funds for the benefit of afflicted former miners, it would make no sense to presume that Congress intended for the Treasury to compensate mining companies for their contributions because the Act lacks an express Congressional statement to the contrary. Such a presumption would tend to nullify all existing legislation adjusting the benefits and burdens of economic life: Every dollar paid pursuant to a statute would be presumed to generate a dollar of Tucker Act compensation. Instead, we hold that the *Williamson County/Preseault* presumption of Tucker Act availability must be reversed where the challenged statute rather than burdening real or physical property, requires a direct transfer of funds to the government.[6] Otherwise, we

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6. Of course, at this point it is by no means clear that the Combined Fund constitutes part of the federal government. For purposes of establishing jurisdiction we need only determine whether " 'the cause of action alleged is so patently without merit as to justify . . . the court's dismissal for want of jurisdiction.' " *Hagans* v. *Lavine*, 415 U.S. 528, 542-43 (1974) (quoting *Bell* v. *Hood*, 327 U.S. 678, 683 (1946)). Clearly, LTV's takings claim is "sufficiently substantial and colorable to sustain jurisdiction." *Duke Power*, 438 U.S. at 72.

would have to hold, as we cannot, that the Supreme Court wrongly exercised jurisdiction over the takings claims in *Concrete Pipe* and *Connolly*.

In any event, our jurisdiction over this case is proper in light of the fact that LTV seeks only declaratory relief on its takings claim. As noted above, under the Tucker Act the Federal Claims Court has no jurisdiction where no claim for monetary relief is involved. Given the clear availability of declaratory relief for asserted Takings Clause violations, *see Duke Power*, 438 U.S. at 71, federal jurisdiction over those claims must therefore vest in the district courts.[7]

We turn next to the merits of LTV's takings claim. Where legislation adjusting the benefits and burdens of economic life

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7. In connection with our jurisdictional holding, we emphatically reject the government's suggestion that the district court could "'assume' subject matter jurisdiction for purposes of finding the statute constitutional." Brief of Donna E. Shalala, at 38 (citing *Browning Ferris Indus.* v. *Muszynski*, 899 F.2d 151, 159 (2d Cir. 1990)). The government says, in effect, that this court's jurisdiction is proper only if we agree with the government's arguments on the merits and hold that the Takings Clause has not been violated. In cases such as the one before us, the government would have federal courts dismiss actions for want of subject matter jurisdiction whenever the Takings Clause has been violated. We emphatically reject such reasoning. The existence of federal subject matter jurisdiction over a given case does not, and indeed cannot, turn upon its eventual resolution on the merits. Among other doctrinal and analytic infirmities, every such dismissal would necessitate an advisory opinion in contravention of the "case or controversy" requirement of Article III.

withstands due process review, ''it would be surprising indeed to discover'' that Congress had thereby committed an unconstitutional taking. *Connolly*, 475 U.S. at 223. ''Given the propriety of the governmental power to regulate, it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another.'' *Id.* Our task is to conduct an ''ad hoc, factual inquir[y]'' into the circumstances of this case. *Id.* at 224. We are to attach ''particular significance'' to three factors: ''(1) 'the economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.' '' *Id.* at 224-25 (quoting *Penn Central Transp. Co.* v. *New York City*, 438 U.S. 104, 124 (1978)). We examine each factor in turn.

Where a regulation mandates contributions to a benefit fund, the proper yardstick of economic impact is that of proportionality. Our assessment of economic impact ''is not made in a vacuum . . . but directly depends on the relationship between the employer and the plan to which it had made contributions.'' *Id.*, 75 U.S. at 225. We conclude that LTV has failed to show that its Coal Act liability will be ''out of proportion to its experience'' with the 1950 and 1974 Benefit Trusts. *Id.* at 226.

LTV's obligation to contribute to the Combined Fund derives from Congress's rational decision to require the entire class of signatory coal mine operators to fulfill their promises of lifetime health benefits for retirees. As a leading member of the BCOA, LTV participated in the collective bargaining that created the 1950 and 1974 Benefit Trusts and in their operation for nearly four decades. Moreover, the employment relationship supplies the rational link by which LTV's Coal Act premiums are tied to its past experience with the

benefit plans. As with the other signatory operators, the size of LTV's annual contribution depends entirely on the number of its former employees receiving benefits from the Combined Fund. By thus mooring a given company's funding obligations to a legitimate measure of its prior benefit from the UMWA health care system, the Coal Act rationally apportions future financial responsibility according to past participation. Consequently, we are not confronted with a case of Congress " 'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' " *Penn Central*, 438 U.S. at 123-24 (1978) (quoting *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960)). We believe that LTV's liability under the Coal Act permissibly reflects its experience with the Benefit Trusts and the National Bituminous Coal Wage Agreements.

Furthermore, as the district court observed, "[t]he fact that [the Coal] Act has provisions intended to mitigate its economic impact also has been held to be a factor that weighs in favor of its constitutionality." *In re Chateaugay*, 163 B.R. at 960. *See also Connolly*, 475 U.S. at 225-26. We note that while the assigned operators may eventually have to bear some of the costs of providing benefits to the industry's "orphaned" retirees, the Coal Act contains several provisions mitigating that burden. First, the transfer of $210 million from the 1950 Pension Fund in the Combined Fund's first three fiscal years will eliminate the unassigned beneficiary and death benefit premiums for all assigned operators in at least the first two of those years. The second series of transfers from the Abandoned Mine Reclamation Fund will continue until at least 2004, potentially totalling hundreds of millions of dollars. By thus minimizing LTV's financial responsibility for retirees it never employed, the Coal Act reinforces the centrality of the employment relationship to the imposition of liability.

Neither do we find that the size of LTV's Coal Act assessments, viewed in isolation, render the burden constitutionally impermissible. As the district court observed, "very large obligations, or diminutions in value or net worth have been upheld on numerous occasions." Slip op. at 10-11, JA 27-28 (citing cases) . "[M]ere diminution in the value of property, however serious, is insufficient to demonstrate a taking." *Concrete Pipe*, 113 S. Ct. at 2291 (upholding required payment equalling 46% of shareholder equity). *See also Connolly*, 475 U.S. at 222 (25% of company's net worth). We note that LTV's allegations about the oppressiveness of these assessments are substantially undermined by LTV's own words. At its bankruptcy confirmation hearing, LTV's chief financial officer conceded that the Coal Act obligations will not interfere with LTV's ability to emerge from bankruptcy and return to profitability. Transcript of Confirmation Hearing at 135-56, *In re Chateaugay*, No. 86-B-11270 (Bankr. S.D.N.Y. May 26, 1993) ("We will waive this condition precedent to effectiveness . . . . This liability was included in all of our projections and we are comfortable with the viability of the company, even if it still has to service this obligation."); JA 561-62.

The second factor to be considered is the degree to which the Coal Act interferes with LTV's reasonable investment-backed expectations. As noted above, we believe that LTV could reasonably have expected to be held accountable for its promise of lifetime health benefits to its workers. LTV argues that the Coal Act destroys the legitimate contractual expectations of the parties to the NBCWAs. LTV points out that the Wage Agreements expressly limited the duration of signatory operators' duty to pay for those promises. Though it is true that LTV's contractual liability has been held to have terminated at the expiration of the 1984 Wage Agreement, *see*

In re Chateaugay, 945 F.2d at 1211, the terms of the NBCWAs cannot limit Congress's authority to enact subsequent legislation requiring the coal industry to fulfill its promises. As Connolly explained:

> "Contracts . . . cannot fetter the constitutional authority of Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." *Norman* v. *Baltimore & Ohio R.R. Co.*, 294 U.S. 240, 307-08 (1935).
>
> If the regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions. For the same reason, the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking.

475 U.S. at 223-24. *Accord Concrete Pipe*, 113 S. Ct. at 2290 (quoting *Connolly*). A regulatory statute which, like the Coal Act, does not authorize the United States to take anything for its own use and only "nullifie[s] a contractual provision limiting liability by imposing an additional obligation that is otherwise within the power of Congress to impose" does not violate the Takings Clause. *Connolly*, 475 U.S. at 224. We hold that the contractual limitation on LTV's liability to the Benefit Trusts fails to obstruct Congress's ability to impose a new and ongoing liability.

As to the legitimacy of LTV's alleged expectations, we reject LTV's contention that it was reasonable to expect to be held no more accountable than society at large for the health care of its retired coal miners. As a voluntary, active

participant in the creation and operation of the Benefit Trusts, LTV was familiar with the federal government's involvement in the regulation of the UMWA and other benefit plans. Against that backdrop, LTV's claim that it expected to unload its retiree health care liabilities onto the remaining operators without ever paying another dollar rings hollow. In light of the fact that LTV benefited enormously from the Wage Agreements, from the labor of its former employees, and from the promise of lifetime health benefits that in part attracted them, any interference wrought by the Coal Act with LTV's expectations was interference with unreasonable, not reasonable, expectations.

We turn finally to the nature of the governmental action involved. "It is well settled that a '"taking" may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.'" *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 490 n.18 (1987) (quoting *Penn Central*, 438 U.S. at 124) (citations omitted). The Coal Act entails no physical invasion of property, nor any permanent confiscation of LTV's assets for governmental use. On the contrary, the Coal Act squarely falls within the category of legislation that serves to adjust the benefits and burdens of economic life on behalf of the common good.

In fact, we find that the Coal Act closely resembles the withdrawal liability provisions of the MPPAA found constitutional in *Concrete Pipe*, 113 S. Ct. at 2289-92, and *Connolly*, 425 U.S. at 221-28. The MPPAA required any employer withdrawing from multiemployer pension plans to pay its *pro rata* share of the plan's vested unfunded liabilities. As did the MPPAA, the Coal Act seeks to restore financial stability and

viability to multiemployer benefit plans threatened by employer withdrawals. Both Acts calculated financial contributions on a proportional basis, reflecting a given employer's prior experience with the plan. The fact that Congress has required LTV to transfer resources to the Combined Fund for the benefit of a discrete, private group — in this case, LTV's former employees and some of the industry's "orphaned" retirees — does not by itself constitute a taking. Congress's authority to "create[ ] burdens for some that directly benefit others" is well established. *Connolly*, 475 U.S. at 223. By holding LTV to its promises to prevent the collapse of the coal industry's retiree health benefit scheme, the Coal Act surely serves to "promote[ ] the common good." *Id.* at 225.

In conclusion, we find that all three factors weigh against a finding that the Coal Act effects an illegal taking. Accordingly, we hold that the Coal Act does not violate the Takings Clause.

III. BANKRUPTCY CLAIMS

In addition to its constitutional challenge, LTV claims that its Chapter 11 bankruptcy protections operate to relieve it of its Coal Act obligations. LTV claims that its Coal Act obligations constitute pre-petition debts which must now be disallowed because no timely proof of claim was filed. The district court analyzed these claims in detail and rejected LTV's arguments. The district court further held that the assessments under the Coal Act are in the nature of a tax, therefore according administrative priority treatment to those assessments accruing during the bankruptcy period. We agree.

The critical issue before us is the scope of the term "claim" as employed by the Bankruptcy Code. If the Combined Fund's premium assessment is a "claim" against LTV

that existed prior to the filing of the petition, then those premiums must now be disallowed. The Code defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). As this court noted in a prior iteration of this case, "Congress unquestionably expected this definition to have wide scope." *In re Chateaugay*, 944 F.2d at 1003. In *Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 558 (1990), the Supreme Court reviewed the legislative history of the Bankruptcy Code and noted Congress's intent to invest the term "claim" with the "broadest possible" scope so that "all legal obligations of the debtor . . . will be able to be dealt with in a bankruptcy case." *See* H.R. Rep. No. 95-595, at 310 (1977) . However broadly "claim" is understood, it is clear that the existence of a valid bankruptcy claim depends on (1) whether the claimant possessed a right to payment, and (2) whether that right arose before the filing of the petition. Looking to the plain language of the Bankruptcy Code, we must ascertain whether a "right to payment" existed at the time of LTV's petition. In *Davenport*, the Court stated simply that "a 'right to payment' is nothing more nor less than an enforceable obligation . . . ." 495 U.S. at 559.

A claim will be deemed pre-petition when it arises out of a relationship recognized in, for example, the law of contracts or torts. "A claim exists only if before the filing of the bankruptcy petition, the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation — 'a right to payment' — under the relevant non-bankruptcy law." *In re National Gypsum. Co.*, 139 B.R. 397, 405 (N.D. Tex. 1992).

We reject LTV's contention that its Coal Act obligations arise out of pre-petition "consideration" for purposes of bankruptcy analysis. LTV argues that its contributions to the Combined Fund represent additional compensation for the labor of its former miners. We disagree. The obligations here at issue are exclusively statutory in origin and cannot be considered a "pay-back" for pre-petition labor. Coal Act premiums are no more compensation for past labor than were those mandated by the Black Lung Act. Most important, they do not constitute the maturation of a right to payment that vested at the time labor was supplied. LTV's liability to the Combined Fund is newly imposed by the Coal Act, not a revival of old contractual obligations. No right to payment on the part of the Combined Fund existed until the enactment of the Coal Act six years after the filing of LTV's petition. Our conclusion in no way narrows the definition of the term "claim," but rather represents a common sense recognition that its reach is not infinite.

In this case, the distinction between statutory and contractual obligations is of paramount importance. The cases cited by LTV for the proposition that its Coal Act liability constitutes consideration for pre-petition labor all involved unmatured or contingent contractual liabilities. *See, e.g., PBGC* v. *LTV Corp.*, 875 F.2d 1008, 1019 (2d Cir. 1989), *rev'd*, 496 U.S. 633 (1990); *Trustees of Amalgamated Ins. Fund* v. *McFarlin's*, 789 F.2d 98, 103-04 (2d Cir. 1986). Thus, the existence of a prior contractual liability for retiree health benefits, *see In re Chateaugay*, 945 F.2d at 1209, does not render pre-petition the later statutory imposition of retiree health care obligations by Congress.

Our conclusion is supported by the courts' treatment of CERCLA liability in similar bankruptcy cases. In *Matter of Penn Central Transp. Co.*, 944 F. 2d 164 (3d Cir. 1991), *cert.*

denied, 503 U.S. 906 (1992), the Third Circuit refused to find that a clean-up claim under CERCLA could exist prior to the enactment of the statute, even though the claim admittedly was based on pre-petition activities. While it is true that *Matter of Penn Central* was decided under the old Bankruptcy Act, which used a narrower definition of "claim" than the new Bankruptcy Code, the logic of that case is, as the district court pointed out, "equally applicable to the Code definition of a 'claim,' which still requires a legal 'right' to be in existence at the time of the filing." 154 B.R. at 419, JA 13. The mere fact that LTV's retirees were employed by LTV pre-petition does not, in and of itself, render pre-petition all claims arising thereafter that may have any nexus to such employment. We agree with the district court that, the Combined Fund's "claims" under the Coal Act in this case "were not in any sense 'contingent or unmatured' . . . they simply did not exist." *Id.* "[W]here there is no legal relationship defined at the time of petition," that is, where the statute imposing the liability has not been enacted, "it would be impossible to find even the remotest 'right to payment.' " *Id.* Therefore, LTV's Coal Act obligations do not represent pre-petition claims that must be disallowed as untimely.

We must next determine whether Coal Act contributions are "tax[es] . . . incurred by the estate," 11 U.S.C. § 503(b)(1)(B), entitled to administrative priority. In *United States* v. *Feiring*, 313 U.S. 283, 285 (1941), the Supreme Court held that tax priority "extends to those pecuniary burdens laid upon individuals or their property, regardless of their consent, for the purpose of defraying the expenses of government or of undertakings authorized by it." The Court further refined its working definition in *National Cable Television Ass'n* v. *United States*, 415 U.S. 336, 340-41 (1974), explaining that taxes are distinguished by their involuntary

character. Working from these precedents, the Ninth Circuit summarized the four elements that characterize a tax:

> (a) An involuntary pecuniary burden, regardless of name, laid upon the individuals or property;
>
> (b) Imposed by, or under authority of the legislature;
>
> (c) For public purposes, including the purposes of defraying expenses of government or undertakings authorized by it;
>
> (d) Under the police or taxing power of the state.

In re Lorber Indus. of California, Inc., 675 F.2d 1062, 1066 (9th Cir. 1982). Though decided under the prior Bankruptcy Act, this test is equally applicable under the Code. *See, e.g., In re Continental Minerals Corp.*, 132 B.R. 757, 758 (Bankr. D. Nev. 1991); *In re O.P.M. Leasing Servs., Inc.*, 60 B.R. 679, 680-81 (Bankr. S.D.N.Y. 1986). It is uncontested that LTV's Coal Act contributions are involuntary burdens assessed by Congress. We have already concluded above that the Coal Act serves a public purpose. As to the fourth factor, we agree with the district court that Congress's enactment of the Coal Act was at least partially an exercise of the taxing power. The placement of the Coal Act at Subtitle J of the Internal Revenue Code of 1986 provides a strong indication of Congress's intent, as does its granting of enforcement powers to the Secretary of the Treasury. 26 U.S.C. § 9707.

In sum, we agree with the district court that "the Coal Act obligations are appropriately described as 'taxes' due to their overwhelmingly involuntary nature, their explicitly stated public purpose, and their obvious potential to be imposed pursuant to the taxing power." 154 B.R. at 422, JA 16. As a result, the portion of LTV's Coal Act liability accruing during the pendency of its bankruptcy is entitled to treatment as an administrative expense of the estate pursuant to section

507(a)(1). The remainder of LTV's obligations was not dischargeable in bankruptcy and is an obligation of the reorganized LTV.

IV. CONCLUSION

We hold today that the Coal Act neither violates LTV's due process rights nor effects an illegal taking of property without just compensation.[8] In addition, we find that LTV's Coal Act liability does not constitute a pre-petition claim that must be disallowed under the Bankruptcy Code, but must rather be considered a tax entitled to administrative priority during the pendency of the bankruptcy.

The judgments below are affirmed and the case is dismissed.

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8. Our decision is thus consistent with the rulings of every other court to examine the constitutionality of the Coal Act. *See Barrick Gold Exploration, Inc.* v. *Hudson*, 47 F.3d 832 (6th Cir. 1995) (upholding decision of Congress not to credit signatories to 1988 Wage Agreement for withdrawal payments made to Benefit Trusts); *Blue Diamond Coal Co.* v. *Shalala*, No. 3-93-473 (E.D. Tenn. Nov. 9, 1994) (upholding application of Coal Act to signatories of pre-1974 NBCWAs); *Templeton Coal Co., Inc.* v. *Shalala*, 855 F. Supp. 990 (S.D. Ind. 1993) (same).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 17th day of April, one thousand nine hundred and ninety-five.

Present:

HON. J. DANIEL MAHONEY
HON. JOSEPH M. MCLAUGHLIN HON. GERALD W. HEANEY,*
Circuit Judges.

Docket No. 94-6024

In re: CHATEAUGAY CORPORATION;
In re: REOMAR, INC.;
In re: LTV CORPORATION

Debtors.

LTV STEEL COMPANY, INC.;
BCNR MINING CORPORATION;
NEMACOLIN MINES CORPORATION; and
TUSCALOOSA ENERGY CORPORATION,

Appellants,

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOTT A. SEGAL; CARLTON R. SICKLES; GAIL R. WILENSKY, PH.D.; MICHAEL H. HOLLAND, WILLIAM P. HOBGOOD, as Trustees of the United Mine Workers of America Combined Benefit Fund; and UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND.

Appellees.

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* The Honorable Gerald W. Heaney, United States Senior Circuit Judge for the Eighth Circuit, sitting by designation.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ORDERED, ADJUDGED and DECREED that the judgements of said district court be and they hereby are affirmed and the case dismissed, in accordance with the opinion of this Court.

GEORGE LANGE III, *Clerk*

By: _____
Edward J. Guardaro
Administrative Attorney

— Issued As Mandate. 6-5-95 —

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: CHATEAUGAY CORPORATION, REOMAR, INC., THE LTV CORPORATION, *et al.*, *Debtors.*	In Proceedings for a Reorganization Under Chapter 11
LTV STEEL COMPANY, INC., *et al.*, *Plaintiffs*, – versus – DONNA E. SHALALA, *et al.*, *Defendants.*	Case Nos. 86 B 11270 through 86 B 11334, 86 B 11402 and 86 B 11464 (BRL) **93 Civ. 0554 (JSM) MEMORANDUM OPINION AND ORDER**

JOHN S. MARTIN, JR., *District Judge:*

This action challenges the constitutionality of the Coal Industry Retiree Health Benefits Act of 1992, 26 U.S.C. §§ 1, 9701 *et seq.* (the "Coal Act" or the "Act") under the due process clause and the takings clause of the Fifth Amendment to the Constitution. Plaintiffs seek a declaratory judgment that the Act is unconstitutional and an injunction against its enforcement. All parties have moved for summary judgment. In addition, the defendant Secretary of Health and Human Services contends, as a preliminary matter, that this court lacks subject matter jurisdiction over the takings claim.

Background

Prior to 1986, plaintiffs LTV and its subsidiaries (collectively, ''LTV'') were engaged in the business of mining bituminous coal and were members of the Bituminous Coal Operators Association (''BCOA''). Accordingly, between 1950 and 1986, plaintiffs were signatories to a series of industry-wide collective bargaining agreements known as National Bituminous Coal Wage Agreements (''NBCWAs''), that were negotiated between the BCOA and the United Mine Workers Association (''UMWA''). The 1950 NBCWA established a trust called the United Mine Workers of America Welfare and Retirement Fund of 1950 (the ''1950 fund'') to provide pension, health and life insurance benefits to current and retired coal miners. Employers' contributions to this fund were made pursuant to a formula based upon the amount of coal mined by each company. The 1950 fund continued to provide health benefits to retired coal miners and their families until 1974, when the 1974 NBCWA divided the 1950 fund into four separate multi-employer benefit plans. Two of the four plans were to provide pension benefits to retired miners. The other two were to provide health and life insurance benefits. The first of these two plans, the United Workers of America 1950 Benefit Plan and Trust (the ''1950 Benefit Trust''), provided health benefits to UMWA miners who retired before 1976; the second, known as the United Mine Workers of America 1974 Benefit Plan and Trust (the ''1974 Benefit Trust''), provided health benefits for miners who retired in or after 1976, as well as the active work force.

Subsequently, in the 1978 NBCWA, individual employers took over responsibility for providing health benefits to active workers and post-1975 retirees, while the 1974 Benefit Trust became a safety net to provide health benefits to any retired miner whose last employer had gone out of the coal mining business.

LTV signed every NBCWA negotiated between 1950 and 1984. Throughout this period, all BCOA member employers were required to contribute to the 1950 Benefit Trust and the 1974 Benefit Trust according to formulae based either on the number of tons of coal mined or the number of hours worked by a coal operator's employees. This meant that if a company ceased coal mining operations, its contribution obligations would cease, even though its retirees would continue to receive benefits from the appropriate Benefit Trust. Thus, when plaintiffs terminated their involvement in the bituminous coal industry in 1986, their obligation to pay for their retirees' health and life insurance benefits ended, and the 1974 Benefit Trust became responsible for coverage of plaintiffs' former employees, even though LTV continued to operate as a company in other lines of business. This was confirmed in *In re Chateaugay Corp.*, 945 F.2d 1205, 1208 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 1167 (1992). *See also District 29, UMWA* v. *UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280, 283 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988).

During the 1980's, the 1950 and 1974 Benefit Trusts began to experience serious financial difficulties. Plaintiffs argue that this was largely a result of the terms of the 1988 NBCWA, to which they were not parties. According to plaintiffs, the 1988 NBCWA provided generous health benefits to UMWA retirees, yet called for inadequate contribution levels by the signatory employers that were certain to result in severe underfunding of the Funds that were to provide those benefits. According to the defendant Trustees of the UMWA Combined Fund (the "Trustees"), a deficit developed in the 1950 and 1974 Benefit Funds because of various factors. These included the escalating cost of health care, the declining number of companies contributing to the Funds, and, in particular, the dramatically increased number of retirees

dependent on those Funds for continuing health benefits as a result of "dumping" of beneficiaries by companies like LTV that ceased coal mining operations and stopped paying benefits to their own retirees.

In response to this crisis, which threatened to deprive retired coal miners of ongoing health benefits, Congress passed the Coal Act. The Coal Act entitles all UMWA retirees and their spouses who were receiving health benefits and death benefits under the 1950 or 1974 Benefit Plans as of July 20, 1992, to receive substantially the same benefits for the rest of their lives. These benefits are to be provided by a new "Combined Fund" to be created by merging the 1950 and 1974 Benefit Funds. The Combined Fund is to be supported by contributions to be paid by all signatories to any NBCWA. The Coal Act requires all such employers (denominated "assigned operators" under the Act) to pay an annual premium to the Combined Fund at a rate calculated to cover (1) the health benefits of all beneficiaries assigned to that assigned operator by the Secretary of Health and Human Services, as having been last employed by that signatory for at least two years; and (2) a pro rata share of the health benefits payable to all beneficiaries who cannot be assigned to any other signatory because their former employer or employers have gone out of business entirely. As a signatory to all the NBCWAs negotiated between 1950 and 1974, LTV will be required to pay annual premiums into the Combined Fund over approximately the next 46 years. It has been estimated that this premium will be over $20 million in the second fiscal year of the Coal Act's operation. *See* Declaration of Donald E. Pierce, Jr. at 4, and will slowly decline over the years.

Plaintiffs contend that the obligation imposed by the Coal Act to pay premiums to the Combined Fund constitutes a taking of property without just compensation, and a deprivation of property without due process in violation of the Fifth

Amendment, because it arbitrarily requires the transfer of plaintiffs' property for the benefit of a narrow group of UMWA retirees, based solely on past employment relationships that plaintiffs could not have anticipated would lead to such an obligation.

I. Jurisdiction Over the Takings Claim

The Tucker Act, 28 U.S.C. § 1491(a)(1), provides that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress . . . or for liquidated or unliquidated damages in cases not sounding in tort." This jurisdiction is exclusive, except in cases in which the amount in controversy is less than $10,000, in which case the federal district courts have concurrent jurisdiction. *Railway Labor Executives' Assoc.* v. *United States*, 987 F.2d 806, 815-16 (D.C. Cir. 1993). *See also Preseault* v. *I.C.C.*, 494 U.S. 1, 110 S. Ct. 914, 922 (1990).

Historically, it has been understood that the Court of Claims' jurisdiction is limited to cases seeking money judgments against the United States. *See, e.g., Murray* v. *United States*, 817 F.2d 1580, 1582-83 (Fed. Cir. 1987) (Claims Court's jurisdiction is limited to cases where the Constitution or statute requires the payment of money damages as compensation for the violation. Because nothing in the due process clause requires payment of money damages for its violation, the Claims Court does not have jurisdiction over due process claims.); *Laguna Hermosa Corp.* v. *Martin*, 643 F.2d 1376, 1379 (9th Cir. 1981) ("The Tucker Act applies only to claims for money damages. It does not preclude review of agency action [by the District Court] when the relief sought is other than money damages."); *Gentry* v. *United States*, 546 F.2d 343, 355 (Cl. Ct. 1976) ("Our authority to issue a

declaratory judgment is limited. . . . We are authorized to do so only where 'it is tied and subordinated to a monetary award.'''); *Kennedy* v. *United States*, 19 Cl. Ct. 69, 75 (Cl. Ct. 1989) (if the relief sought is other than a money judgment, the case must be dismissed.).

In their Complaint, plaintiffs do not seek any money judgment against the United States — only a declaratory judgment that the Coal Act is unconstitutional under both the takings clause and the due process clause of the Fifth Amendment. This is relief that the Court of Claims does not have the power to award. *Kennedy* v. *United States*, 19 Cl. Ct. at 75. While the Circuit Court for the District of Columbia recently held in the *Railway Labor Executives* case that an action in which a group of unions sought a declaratory judgment that rulings by the I.C.C. modifying the terms of a collective bargaining agreement violated the takings clause, was within the exclusive jurisdiction of the Court of Claims, even though the plaintiffs made no claim for monetary damages, 987 F.2d 816, that court did not explain how the Claims Court could award meaningful relief in a case such as this. It also failed to distinguish the many cases like *Murray, Laguna Hermosa, Gentry* and *Kennedy*, that hold that the Tucker Act applies only to claims for money damages.

Moreover, the Court of Claims does not have jurisdiction to hear claims against parties other than the United States. *Kennedy* v. *United States*, 19 Cl. Ct. 69, 75-76 (Cl. Ct. 1989) (''if the relief sought is against others than the United States, the suit as to them must be ignored as beyond the jurisdiction of the Court. . . . Furthermore, if the maintenance of a suit against private parties is a prerequisite to the prosecution of the suit against the United States, the suit must be dismissed.'' (citing *United States* v. *Sherwood*, 312 U.S. 584, 588 (1941)).

Thus, to the extent that the Trustees are necessary parties to this suit, or that any repayment of premiums paid by plaintiffs must come from the Combined Fund, the Court of Claims would be without jurisdiction to award full relief in this case. Indeed, in its decision on a motion for a preliminary injunction in a case similar to this one, the court "determined [the Combined Fund and its trustees] to be necessary to this litigation: they are charged with the responsibility of collecting and receiving the insurance premiums in question and with administering the health benefits in question." *Templeton Coal Co., Inc.* v. *Shalala*, TH 93-158-C (S.D. Ohio Nov. 18, 1993) at 13.

Consequently, it would be illogical to announce and follow a simple rule that a claim is within the exclusive jurisdiction of the Court of Claims simply because the plaintiffs have intoned the words "taking without just compensation". Instead, the claim and the relief requested must be reviewed to determine whether they are of the type that logically fall within the powers of the Claims Court.

In this case, the plaintiffs' "takings" claim is indistinguishable from their due process claim. As the Court stated in *Preseault* v. *I.C.C.*, the takings clause "is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking." 110 S. Ct. at 921 (citing *First English Evangelical Lutheran Church* v. *County of Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 2385 (1987)). The very gist of LTV's claim in this case is that the requirement that they pay premiums into the Combined Fund is not "otherwise proper", but rather, arbitrary, unfair and illegal. They seek not *compensation*, but invalidation of the law that requires them to pay those premiums. Therefore, plaintiffs' "takings" claim actually is a claim of deprivation of due process and not a claim for compensation that is within

the exclusive jurisdiction of the Court of Claims. Both *Alabama Hospital Association* v. *United States*, 656 F.2d 606, 610 (Cl. Ct. 1981), *cert. denied*, 456 U.S. 943 (1982), and *Marrero Land & Improvement Assoc., Ltd.* v. *United States*, 26 Cl. Ct. 193 (Cl. Ct. 1992), both of which held that the jurisdiction of the Court of Claims over a takings claim is not defeated merely because a plaintiff must make a constitutional due process argument to prevail, are distinguishable in that plaintiffs in both cases sought money damages, and thus were pursuing the "just compensation" that is at the heart of the takings clause. Therefore, both of plaintiffs' claims are within the jurisdiction of the Court.[1]

II. The Takings Clause Claim

The three factors generally considered in determining whether an unconstitutional taking has taken place are: (1) the severity of the economic impact of the regulation on the

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1. This finding is consistent with the courts' actions in *Barrick Gold Exploration* v. *Hudson*, 823 F. Supp. 1395 (S.D. Ohio 1993), and *Templeton Coal Co. Inc.* v. *Shalala*, TH 93-158-C (S.D. Ind. Oct. 25, 1993 and Nov. 18, 1993). In both cases, plaintiffs claimed that the Coal Act violated the takings clause and the due process clause of the Fifth Amendment. In *Barrick Gold* the district court granted summary judgment against plaintiffs on both claims, without discussing the jurisdictional issue. In *Templeton Coal*, the district court initially entered an injunction against implementation of the Act pending resolution of that action, again without discussing the court's jurisdiction over the takings claim. On November 18, 1993, it rescinded its injunction as incorrectly granted, noting that no significant challenge to the court's jurisdiction over that suit had been raised. *Templeton Coal*, decision of Nov. 18, 1993 at 14.

claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action. *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 106 S. Ct. 1018 (1986); *Penn Central Transp. Co.* v. *New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

A. Economic Impact

There is no question that the economic impact of the Coal Act of LTV is substantial. The imposed liability will extend over approximately the next 46 years, and will be over $20 million in the second fiscal year of the Act's operation. Declaration of Donald E. Pierce, Jr. at 4. This liability is not, however, of the magnitude that would, in itself, invalidate the Act. "[M]ere diminution in the value of property, however serious, is insufficient to demonstrate a taking." *Concrete Pipe & Products* v. *Construction Laborers Pension Trust*, 113 S. Ct. 2264, 2291 (1993). Thus, very large obligations, or diminutions in value or net worth have been upheld on numerous occasions. *See, e.g., Connolly* v. *PBGC*, 475 U.S. 211, 106 S. Ct. 1018 (1986) (25% of firm's net worth); *Concrete Pipe*, 113 S. Ct. at 2291 (45% of shareholder equity (due process claim)); *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 117 (1926) (approximately 75% dimunition in value); *Hadacheck* v. *Sebastian*, 239 U.S. 394, 36 S. Ct. 143 (1915) (92.5% diminution). Moreover, in connection with the confirmation of LTV's plan of reorganization under Chapter 11 of the Bankruptcy Code, LTV's Senior Vice President and Chief Financial Officer, K. C. Caldabaugh, stated that the LTV's liability for Coal Act premiums "was included in all of our projections and we are comfortable with the viability of the company, even if it still has to service this obligation." *See* Declaration of Edward A. Smith, dated July 26, 1993, Ex. B.

The fact that an Act has provisions intended to mitigate its economic impact also has been held to be a factor that weighs in favor of its constitutionality. *Connolly* v. *PBGC*, 475 U.S. 211, 106 S. Ct. at 1026. In this case, the Coal Act does contain such provisions. First, § 9704(i)(1)(B) requires signatories of the 1988 NBCWA to make payments sufficient to cover all deficits in the 1974 Benefit Trust that accrued prior to expiration of the 1988 NBCWA. Further, § 9705(a)(1) of the Act requires the transfer of a total of $210 million from the 1950 Benefit Trust during the first three years of the Act's operation. The first $70 million transfer is to reduce the total premium of each assigned operator for the first year, 26 U.S.C. § 9705(a)(3)(A); the second and third year transfers are to be used to reduce the assigned operators' unassigned beneficiary and death benefit premiums. 26 U.S.C. § 9705(a)(3)(B). In addition, in subsequent years until 2004, interest earned by the Abandoned Mine Reclamation Fund is to be transferred to the Combined Fund to reduce unassigned beneficiary premiums. 30 U.S.C. § 1232(h). In fact, these transfers will eliminate all unassigned beneficiary premiums and death benefit premiums during the first two years of operation of the Coal Act. Pierce Declaration at 5.

Finally, the amount of the payments required of plaintiffs are directly related to the number of beneficiaries of the Combined Fund that were, in fact, employed at one time by plaintiffs, and are proportionate to plaintiffs' activities under the NBCWAs. *See Templeton* decision of November 18, 1993 at 23. Thus, the economic impact of the Coat Act on plaintiffs is not such that it can be held to violate the takings clause of the Fifth Amendment. *See also Barrick Gold Exploration, Inc.* v. *Hudson*, 823 F. Supp. 1395, 1408-09 (S.D. Ohio 1993).

B. Interference with Investment-backed Expectations

LTV argues that every NBCWA signed by plaintiffs expressly limited its obligation to pay premiums for health and life insurance benefits for its retirees to the term of the relevant NBCWA. This, plaintiffs argue, was confirmed by numerous court decisions, including *In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 1167 (1992). Furthermore, plaintiffs point out, even though several NBCWAs signed by LTV contained "evergreen clauses" that required continuing contributions by coal operators who did not sign later NBCWAs, since all NBCWAs calculated premiums owed on the basis of either the amount of coal mined or the number of hours worked by a coal operator's employees, it was guaranteed that an operator would have no obligation to pay premiums to the Benefit Trusts after it ceased coal mining operations. Accordingly, LTV claims that after it left the coal mining industry in 1986, it had a reasonable investment-backed expectation that it had fully discharged its obligations to pay for health benefits for its retirees.

It is clear, however, that the NBCWAs cannot protect LTV from new legislatively imposed obligations. "Contracts, however express, cannot fetter the constitutional authority of Congress. . . . Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." *Concrete Pipe*, 113 S. Ct. at 2290. Furthermore, over a period of over twenty years, LTV signed a series of NBCWAs that provided that its retirees would be entitled to health benefits "for life". *See District 29* v. *1974 Benefit Plan & Trust*, 826 F.2d 280, 283 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988); *UMWA* v. *Nobel*, 720 F. Supp. 1169, 1178 (W.D. Pa. 1989); *Grubbs* v. *UMWA*, 723 F. Supp. 123, 128 (W.D. Ark. 1989); *Barrick Gold Exploration, Inc.* v. *Hudson*, 823 F. Supp. 1395, 1405 (S.D. Ohio 1993);

Templeton Coal Co., Inc. v. *Shalala*, decision of Nov. 18, 1993, at 6. While it is true that pursuant to the relevant NBCWAs, LTV would have expected that other operators would be required to pay for those benefits for its retirees, it also could reasonable have realized that the escalating cost of health care, coupled with the dwindling number of operators remaining in the coal mining industry and increasing number of "orphan" retirees as operators, including itself, left the industry, would eventually make it impossible for the 1974 Benefit Trust to provide those benefits.

Thus, given the extensive governmental involvement in and regulation of the coal industry over the years, and of the benefits field generally, one could reasonably foresee that the government might take action at some point to ensure that the Benefit Trust would remain solvent and capable of meeting its obligations. That such action might include a requirement that coal operators and former coal operators fund the lifetime benefits to which their retirees were held to be entitled, was even more predictable in light of the imposition of retroactive liability under the Multiemployer Pension Plan Amendment Act ("MPPAA") to pay benefits to former employees who were found to suffer from Black Lung Disease. The MPPAA was upheld against constitutional challenge in *PBGC* v. *R. A. Gray & Co.*, 467 U.S. 717, 104 S. Ct. 2709 (1984), *Connolly* v. *PBGC*, 475 U.S. 211, 106 S. Ct. 1028 (1986), and *Concrete Pipe* v. *Construction Laborers Pension Trust*, 113 S. Ct. 2264 (1993).

Finally, to the extent that plaintiffs claim to have relied on court decisions that held that a coal operator's responsibility to fund health benefits for its retired employees under any NBCWA terminated with the expiration of that NBCWA (*see, e.g., In re Chateaugay, supra*, and the numerous cases cited at page 8, note 5 of Plaintiff's Memorandum of Points and Authorities in Support of its Motion for Summary

Judgment), plaintiffs fail to state what *investment-backed* decisions they made in reliance thereon. They clearly did not sign any NBCWA on the basis of such reliance because all of the cases cited were decided after LTV signed the last NBCWA to which it was a party in 1974.

Therefore, the court concludes that the Coal Act does not interfere with plaintiffs' realistic investment-backed expectations.

C. Character of the Government Action

While it is true that the Coal Act compels the payment of funds of which plaintiffs are completely and permanently divested, the government has not physically invaded LTV's property or permanently appropriated its assets for its own use. *See Concrete Pipe & Prods.* v. *Construction Laborers Pension Trust*, 113 S. Ct. 2264, 2290 (1993). "It is well settled that that a 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Keystone Bituminous Coal Assoc.* v. *DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 1243 (1987). The Coal Act clearly falls into the second category — an attempt to adjust the benefits and burdens of economic life to promote the common good.

Plaintiffs contend, to the contrary, that apart from constitutionally permitted taxation, forced transfers of funds have been permitted only in limited situations. Specifically, plaintiffs claim that such a transfer is permissible only if (1) plaintiffs are compensated in some other part of the legislation involved, (2) the transfer seeks to vindicated independently arising contractual obligations, or (3) the transfer is intended to compensate for harm caused by the transferor or the

transfer is ordered pursuant to the police power to restrict the use of property injurious to the health or safety of the community. While it clearly is true that the cited cases proffer the listed reasons to justify forced transfers of funds, LTV has cited no case, and this court has found none that states that these are the only available justifications for legislation or other government action that result in the transfer of money from one party to another.

Plaintiffs also contend that the Coal Act does not really benefit the common good. Instead, they claim, it benefits only a small and select group of retired coal miners. This argument ignores, however, the fact that the Coal Act was passed in response to the 1990 Coal Commission Report to the Secretary of Labor, which found that concern over retired coal miners' health benefits was a key issue in the strike that shut down the nation's coal fields for ten months in 1989, and was crucial to the stability of the coal industry generally.

Consequently, plaintiffs have not shown that the nature of the governmental interference with their property that results from the operation of the Coal Act is of the sort that would support a finding that the Act effects a taking without just compensation. Consequently, the plaintiffs' takings claim is dismissed.

III. The Due Process Claim

"It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *PBGC* v. *R. A. Gray & Co.*, 467 U.S. 717, 104 S. Ct. 2709, 2718 (1984) (quoting *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S. Ct. 2882 (1976)). Thus,

economic legislation will withstand a due process challenge if the means chosen bear a rational relationship to a legitimate governmental purpose. *Id.* a 2717-18; *Duke Power* v. *Carolina Env. Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 2635-36 (1978); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S. Ct. 2882, 2892 (1976). Plaintiffs claim that the Coal Act is, in fact, arbitrary and irrational in that it requires former coal operators, like themselves, who in the past voluntarily provided their employees with limited health benefits pursuant to time-limited contracts that have long since been fully performed and terminated, to now provide not only some of those former employees, but also a number of retired miners who never worked for plaintiffs, with health benefits for life. Plaintiffs argue that there is no rational relationship between their past acts in this regard, which they rationally understood to create no future obligations once the contracts that they signed had expired, and the duty that has now been imposed upon them under the Coal Act. The Supreme Court has stated, however, that "[O]ur cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. . . . This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." *Concrete Pipe & Products of California, Inc.* v. *Construction Laborers Pension Trust*, 113 S. Ct. 2264, 2287 (1993); *PBGC* v. *R. A. Gray & Co.*, 467 U.S. 717, 104 S. Ct. 2709, 2717 (1984).

The problem with plaintiffs' claim that there is no rational relationship between its past payments for its former employees' health benefits and the requirement that it now pay for those benefits, and those of certain orphan beneficiaries, for the balance of those beneficiaries' lives, is that at least between 1974 and 1986, LTV was signatory to a series of NBCWAs that included language that gave retired coal miners a legitimate expectation of lifetime health benefits.

See, e.g., In re Chateaugay Corp., 945 F.2d at 1210; *District 29, UMWA* v. *UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280, 282 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988); *UMWA* v. *Nobel*, 720 F. Supp. 1169, 1178 (W.D. Pa. 1989), *aff'd*, 902 F.2d 1558 (3rd Cir. 1990), *cert. denied*, 111 S. Ct. 1102 (1991); *Templeton Coal Co., Inc.*, TH 93-158-C (Nov. 18, 1993 S.D. Ind.) at 6. While LTV might well have expected that other coal operators would be required to pay for those benefits after LTV left the coal mining industry, LTV also could reasonably have anticipated that the 1950 and 1974 Benefit Trusts would not be able to support the financial burdens imposed upon them as a result of escalating health care costs, the aging of the beneficiary population and the ''dumping'' of beneficiaries into the 1974 Benefit Trust, both by companies going out of business totally and companies who, like LTV, ceased coal mining operations but remained in business in other industries. Moreover, since LTV's retirees became ''orphans'' and were ''dumped'' into the 1974 Benefit Trust in 1987, the remaining signatories to the 1984 NBCWA and 1988 NBCWA were forced to support those retirees' health benefits, and those ''orphans'' added to the overall situation that led to the inability of the Benefit Trust to meet its obligations. Now Congress has legislated that all of the BCOA members that employed the beneficiaries of the Benefit Trusts pay for the lifetime benefits that those beneficiaries were promised.

There is nothing irrational or arbitrary in Congress' placing liability for paying for the lifetime health benefits promised to the beneficiaries of the Combined Fund on all those who collectively made that promise. Presumably, LTV also benefitted from that promise during the collective bargaining that led up to agreement regarding each of the NBCWAs that it signed, and benefitted from the ongoing existence of the UMWA labor pool that existed throughout those years, at

least in part as a result of the benefit packages that were incorporated in the NBCWAs. There also is nothing arbitrary in the requirement that a former coal operator whose past actions contributed to a crisis that Congress found to threaten interstate commerce be required to contribute to the legislatively chosen solution to that problem. *Compare Concrete Pipe & Products of California, Inc.* v. *Construction Laborers Pension Trust*, 113 S. Ct. at 2287. *See also Barrick Gold Exploration, Inc.* v. *Hudson*, 823 F. Supp. 1395, 1407 (S.D. Ohio 1993) (''The requisites of due process are met when Congress devises a scheme that rationally spreads the cost of solving a problem among those responsible for creating it.'').

LTV also complains that the Coal Act is retroactive in that it imposes obligations based on past relationships and obligations. It then argues, correctly, that the justifications for prospective application of legislation may not be sufficient to justify the retrospective application of that same legislation. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S. Ct. 2882, 2893 (1976). This is because ''[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.'' *General Motors Corp.* v. *Romein*, 112 S. Ct. 1105, 1112 (1992).

First, it is not clear that the Coal Act is, in fact, retroactive legislation. A statute is not retroactive merely because it imposes current and future obligations based on past acts. *Reynolds* v. *United States*, 292 U.S. 443, 449, 54 S. Ct. 800 (1934); *United States* v. *South Carolina Recycling and Disposal, Inc.*, 653 F. Supp. 984, 996 (D.S.C. 1984), *aff'd in part, vacated and remanded on other grounds sub nom. United States* v. *Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989).

In any event, even if the Coal Act is retroactive in its application, "the strong deference accorded legislation in the field of national economic policy is no less applicable when the legislation is applied retroactively." *PBGC* v. *R. A. Gray & Co.*, 467 U.S. 717, 104 S. Ct. 2709, 2717 (1984). "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Id.* at 2717-18. Accordingly, it is not for this Court to determine whether the means chosen by Congress to effect a legitimate end are the best possible. This Court has no trouble determining, however, that the creation and funding of the Combined Fund constitutes a legitimate legislative purpose and that the means chosen, for the reasons stated above, are not irrational or arbitrary.

For the reasons stated, plaintiffs' motion for summary judgment is denied; defendants' motions for summary judgment are granted, and the complaint is dismissed.

SO ORDERED.

/s/ JOHN S. MARTIN, JR.,

JOHN S. MARTIN, JR., U.S.D.J.

Dated: December 14, 1993

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: CHATEAUGAY CORPORATION, REOMAR, INC., THE LTV CORPORATION, *et al.*, *Debtors.*	**JUDGMENT**
	In Proceedings For a Reorganization Under Chapter 11
LTV STEEL COMPANY, *et al.*, *Plaintiffs*, – against – DONNA E. SHALALA, *et al.*, *Defendants.*	Case No. 86 B 11270 through 86 B 11334, 86 B 11402 and 86 B 11464 (BRL)
	93 CIVIL 0554 (JSM)

All parties having moved summary judgment, in addition, the defendant Secretary of Health and Human Services, having contended, as a preliminary matter, that the court lacks subject matter jurisdiction over the takings claim, and the said motions having come before the Honorable JOHN S. MARTIN, United States District Judge, and the Court thereafter on December 15, 1993, having rendered its opinion and order (#72498); denying plaintiffs' motion for summary judgment, and granting defendants' motions for summary judgment, and dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That plaintiffs' motion for summary judgment be and it is hereby denied, and it is further,

ORDERED, that defendants' motions for summary judgment be and they are hereby granted, and it is further,

ORDERED, that the complaint be and it is hereby dismissed for the reasons stated in the Memorandum Opinion and Order, dated December 15, 1993.

DATED: New York, New York /s/
December 28, 1993 Clerk

By: /s/
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: CHATEAUGAY CORPORATION, REOMAR, INC., THE LTV CORPORATION, *et al.*,

Debtors.

In Proceedings For a Reorganization Under Chapter 11
Case Nos. 86 B 11270-11334, 86 B 11402, and 86 B 11464 (BRL)

LTV STEEL COMPANY, INC., BCNR MINING CORPORATION, NEMACOLIN MINES CORPORATION, and TUSCALOOSA ENERGY CORPORATION,

Plaintiffs,

– versus –

DONNA E. SHALALA, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOSEPH P. CONNORS, SR., MARTY D. HUDSON, THOMAS O. S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY, JOHN DOE, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED FUND; and THE UNITED MINE WORKERS OF AMERICA COMBINED FUND,

Defendants.

93 Civ. 0554 (JSM)

MEMORANDUM OPINION AND ORDER

JOHN S. MARTIN, JR., District Judge:

This case centers around application of the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102-486, Subtitle C, 106 Stat 3036-56 (1992) (codified at 26 U.S.C. §§ 1, 9701

et seq.) (the "Coal Act"), recently enacted legislation which imposes costs on companies involved in the coal mining industry and their successors in order to provide health and life insurance benefits to retired coal workers. Plaintiffs, all related companies in Chapter 11 reorganization proceedings, seek to determine the effect the Coal Act will have on their obligations.

Background

Plaintiff LTV Steel Company ("LTV Steel") is the parent of plaintiffs BCNR Mining Corporation, Nemacolin Mining Corporation, and Tuscaloosa Energy Corporation (collectively, the "Mining Subsidiaries"). LTV Steel and the Mining Subsidiaries, either in their corporate capacities or through former corporate parents, were signatories to numerous industry-wide contracts known as "National Bituminous Coal Wage Agreements" ("Wage Agreements"), which were the product of multi-employer bargaining by the Bituminous Coal Operators Association with the United Mine Workers of America. The 1950 Wage Agreement, the first such contract, established a trust entitled the "United Mine Workers of America Welfare and Retirement Fund of 1950" (the "1950 Retirement Fund") to provide pension, health and life insurance benefits and mandated contributions from employers based on the amount of coal tonnage mined, as did subsequent Wage Agreements until 1974. The 1974 Wage Agreement established a trust entitled the "United Mine Workers 1974 Benefit Plan and Trust" (the "1974 Benefit Trust") to provide health and life insurance benefits for workers retiring after its inception, and also bifurcated the 1950 Retirement Fund into two separate trusts pursuant to federal law, 28 U.S.C. § § 1001 *et seq.*, one of which was entitled the "United Mine Workers of America 1950 Benefit Plan and Trust" (the "1950 Benefit Trust") and which mirrored the 1974 Benefit Trust. Each Wage

Agreement provided that the employers were to be primarily responsible for health and life insurance benefits during the term of the agreement, while the various trusts were responsible for such benefits when workers were no longer covered by a Wage Agreement or their employer had ceased operations. The last relevant Wage Agreement was negotiated in 1984 and expired on January 31, 1988.

Plaintiffs, along with LTV Steel's parent, The LTV Corporation, and over fifty other affiliates, filed for Chapter 11 bankruptcy protection on July 17, 1986. Subsequently, plaintiffs sought to terminate health benefits to retirees, including benefits required under the 1984 Wage Agreement. However, after introduction of Congressional legislation requiring plaintiffs to continue the benefits and a union strike, plaintiffs resumed provision of the benefits.

In late 1987, plaintiffs announced their intention to cease providing retiree benefits after January 31, 1988, the date of expiration of the 1984 Wage Agreement. When the 1974 Benefit Trust refused to assume responsibility for benefits for affected retirees, plaintiffs obtained a ruling in an adversary proceeding declaring that plaintiffs' obligations had terminated and those of the 1974 Benefit Trust had commenced at the end of the term of the 1984 Wage Agreement. *In re Chateaugay Corp.*, 945 F.2d 1205, 1208 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 1167 (1992).

So matters stood until late 1992 when Congress enacted the Coal Act. Stemming from a legislatively declared intention "to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry," Coal Act § 19142, the Coal Act combined the 1950 and 1974 Benefit Trusts into a trust entitled the "United Mine Workers of America Combined Benefit Fund" (the "Combined Fund"), and requires all

signatories to any Wage Agreement (or their successors) to make contributions to the Combined Fund, which in turn is responsible for providing benefits to retirees. Each signatory's contribution, which is calculated annually and payable in monthly installments, is based on the number of retirees who worked for the signatory and the current cost of health care, with an additional contribution required for "orphan" beneficiaries who are not allocated to a signatory or would be allocated to a signatory which has gone out of business.

Plaintiff LTV Steel and its affiliates are now preparing, after seven years, to emerge from Chapter 11[1] and have scheduled a confirmation hearing on a plan that does not provide for payments under the Coal Act, which plaintiffs claim will be at least in excess of $12 million annually. Attempting to settle this issue before the confirmation hearing, plaintiffs have brought this action for a declaratory judgment, seeking to have the Coal Act declared unconstitutional and also seeking to determine its application to them. Only the latter issue is before this Court on plaintiff LTV Steel's motion for partial summary judgment. Defendants the trustees of the Combined Fund (the "Trustees") and the Combined Fund oppose the motion. There being no facts in dispute, this issue is appropriately decided by summary judgment.

Discussion

LTV Steel argues first that any claim the Combined Fund may have is a pre-petition claim and is thus barred because no timely proof of claim was filed. Under the Bankruptcy Code, a "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,

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1. The Mining Subsidiaries apparently will not stay in business.

legal, equitable, secured, or unsecured . . .'' 11 U.S.C. § 101(5)(a). Thus, the question is whether the Combined Fund had a ''claim'' before the petition was filed. *Cf.* 11 U.S.C. § 101(10) (defining ''creditor'' as an ''entity that has a claim against the debtor that arose at the time of or before'' the commencement of the bankruptcy case).

The statutory language defining a ''claim'' is drafted broadly, and has been so interpreted. *In re Robinson*, 776 F.2d 30, 34-36 (2d Cir. 1985), *rev'd on other grounds*, 479 U.S. 36 (1986); *see* H.R. Rep. No. 595, 95th Cong. 2d Sess. 309 (''claim'' encompasses ''all legal obligations of the debtor, no matter how remote or contingent''). Tort claims have been found to have arisen pre-petition where all the ''acts giving rise to the alleged liability are performed,'' even though the injury had not yet manifested. *In re Waterman S.S. Corp.*, 141 B.R. 552, 556 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 57 B.R. 680, 689 (Bankr. S.D.N.Y. 1986). *But see In re Chateaugay*, 944 F.2d 997, 1003-04 (2d Cir. 1991) (questioning rationale of basing ''claim'' only on pre-petition conduct). A claim for statutory liability for post-petition withdrawal from a contractually imposed obligation to pay into pension funds was likewise held to be pre-petition because it arose out of the pre-petition obligation. *Pension Ben. Guar. Corp.* v. *LTV Corp.*, 875 F.2d 1008, 1019 (2d Cir. 1989), *rev'd on other grounds*, 496 U.S. 633 (1990); *Trustees of Amalgamated Ins. Fund.* v. *McFarlin's, Inc.*, 789 F.2d 98, 103-04 (2d Cir. 1986).

However, where there is no legal relationship defined at the time of petition, it would be impossible to find even the remotest ''right to payment.'' ''The Code's inclusion of 'unmatured' and 'contingent' claims is usually said to refer to obligations that will become due upon the happening of a future event that was 'within the actual or presumed contemplation of the parties at the time the original relationship between the parties was created.' '' *Chateaugay*, 944 F.2d at 1004 (quoting *In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980), *aff'd mem.*, 646 F.2d 193 (5th Cir. 1981)); *see also In re Chateaugay*, 944 F.2d at 1005

(noting difficulty of applying contractual concepts of maturity and contingency to statutory claims). Claims under the Coal Act were not in any sense "contingent" or "unmatured" at the time of the petition; they simply did not exist. There is no basis for terming these claims pre-petition.

The Third Circuit's decision in *In re Penn Cent. Transp. Co.*, 944 F.2d 164 (3d Cir. 1991), *cert. denied*, 112 S. Ct. 1262 (1992), addresses a closely analogous issue. There petitioners sought to assert CERCLA claims against the debtor, who defended on the ground that the claims were discharged because the acts giving rise to the claims took place pre-petition, even though CERCLA itself was not passed until after the bankruptcy discharge. The Court of Appeals held that the claims were not discharged because "at the time of the Consummation Order, there was no statutory basis for liability to be asserted against [the debtor] by the petitioners." *Id.* at 167; *see also United States* v. *Serafini*, 135 B.R. 219, 221 (M.D. Pa. 1991) (confirmation "could not have possibly discharged the CERCLA liability because such liability did not exist at the time" of confirmation, thus "there was no debt or liability . . . which could have been modified or altered by discharge") (citing *Penn Central*).

LTV Steel attempts to distinguish these cases on the basis that they were interpreting provisions of the Bankruptcy Act, which provided a narrower definition of "claim" than the superseding Bankruptcy Code which now governs. *See In re Robinson*, 776 F.2d at 34-45. The Code's broader definition of "claim" is not limitless, however: "Congress intended 'claim' to encompass any right held by any person or entity to enforce any money obligation of the debtor." *Id.* at 35. The logic of *Penn Central* and *Serafini* is thus equally applicable to the Code definition of a "claim", which still requires a legal "right" to be in existence at the time of filing.[2]

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2. LTV Steel also contends that the authority of *Penn Central* is in question, inasmuch as it claimed as support *Schweitzer* v. *Consolidated Rail Corp.*, 758 F.2d 936 (3d Cir.), *cert. denied*, 474 U.S. 864

PBGC v. *LTV Corp.* and *McFarlin's*, two cases on which LTV Steel relies heavily, are not to the contrary. In each case the Second Circuit found claims to relate to pre-petition debts where they were based on contractual obligations to pay into pension funds, grounding its conclusions in part on the fact that the pre-petition labor was the consideration giving rise to the claims asserted. *PBGC* v. *LTV Corp.*, 875 F.2d at 1019; *McFarlin's*, 789 F.2d at 103-04. LTV Steel argues that these cases compel the conclusion that any claim based on pre-petition labor is by definition a pre-petition claim. While this logic might hold for contractual claims, as were at issue in the two cases cited, it is inapplicable where the statute giving rise to the liability is not enacted until after the petition has been filed, for the reasons stated above. *See In re Chateaugay Corp.*, 112 B.R. 513, 520-21 (S.D.N.Y. 1990), *aff'd*, 944 F.2d 997 (2d Cir. 1991) (distinguishing on this basis).

LTV Steel also asserts that no claim for liability under the Coal Act can lie against it because the applicable law is the law that existed at the time of filing. The cases cited by LTV Steel establish, at best, that the treatment and scope of a claim are frozen at the time of filing, and cannot be subsequently modified. None of the cases cited addresses the very different situation where a claim comes into being only after the peti-

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(1985), which in turn relied on *In re M. Frenville Co.*, 744 F.2d 332 (3d Cir. 1984), *cert. denied*, 469 U.S. 1160 (1985). LTV Steel points to numerous cases in various circuits questioning the holding in *Frenville*, *see, e.g. In re Baldwin-United Corp. Litig.*, 765 F.2d 343, 348 n.4 (2d Cir. 1985), but we note that more recently the Second Circuit has cited *Schweitzer* with approval, if not adoption, *see In re Chateaugay*, 944 F.2d at 1003-04. In any case, the issue decided in *Frenville* does not relate to the holding of *Penn Central* cited herein.

tion has been filed as a result of legislation, and thus can in no sense be said to have arisen previously.

LTV Steel next argues that the Combined Fund's claim is one for "reimbursement or contribution" by a "co-debtor" and is thus disallowed under 11 U.S.C. § 502(e)(1). However, "co-debtor" status requires the *sharing* of a liability, *In re Baldwin-United Corp.*, 55 B.R. 885, 890 (Bankr. S.D. Ohio 1985); although the source of liability may differ, each debtor must be liable to the same party for essentially the same claim, *In re White Motor Corp.*, 731 F.2d 372, 374 (6th Cir. 1984). Here, LTV Steel is liable only to the Combined Fund, whereas the Combined Fund is liable only to individual retirees; under these circumstances, there is clearly no "sharing" of liability, and thus no co-debtor status on which to base disallowance.

Given that the claims at issue were not incurred prepetition, the next question is whether they should be accorded any priority. Defendants argue that the contributions required by the Coal Act are a tax imposed by the federal government and incurred by the estate, and thus are administrative expenses entitled to first priority under 11 U.S.C. §§ 503 and 507.[3] LTV Steel denies that the contributions required should be classified as "taxes."[4]

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3. 11 U.S.C. § 507(a)(1) provides that administrative expenses allowed under § 503(b) shall have first priority. 11 U.S.C. § 503(b)(1)(B) provides for allowance of "any tax . . . incurred by the estate, except a tax of a kind specified in section 507(a)(7)," which section grants seventh priority to certain enumerated taxes.

4. LTV Steel's position is particularly curious in light of its complaint in this action which characterizes payments required by the Coal Act as "a tax." Complaint ¶ 33.

"[U]nder § 503, two prerequisites will determine whether a tax claim will be granted a first priority: (1) the tax must not be specified in § 507(a)(7) . . . of the Code and (2) the tax must be incurred by the estate." *In re O.P.M. Leasing Servs., Inc.*, 68 B.R. 979, 982 (Bankr. S.D.N.Y. 1987); *see* n.3, *supra*. Neither party claims that the payments at issue are taxes specified in § 507(a)(7); however, the more fundamental issue of whether these payments are a "tax" is hotly contested.

Whether these payments are to be considered taxes for bankruptcy purposes is a question of federal law. *City of New York* v. *Feiring*, 313 U.S. 283, 285 (1941); *In re Pan Am. Paper Mills, Inc.*, 618 F.2d 159, 162 (1st Cir. 1980); *In re Continental Minerals Corp.*, 132 B.R. 757, 758 (Bankr. D. Nev. 1991). The Supreme Court has said that tax priority "extends to those pecuniary burdens laid upon individuals or their property, regardless of their consent, for the purpose of defraying the expenses of government or of undertakings authorized by it." *Feiring*, 313 U.S. at 285; *see New Jersey* v. *Anderson*, 203 U.S. 483, 492 (1906). It expanded upon this definition in *National Cable Television Ass'n* v. *United States*, 415 U.S. 336, 340-41 (1974), distinguishing a tax, which is imposed on the basis of the status of the payor, from a fee, which is a charge upon the payor for a benefit received; put another way, it classified taxes as obligations incurred involuntarily, and fees as obligations incurred voluntarily. *Id.*; *see United States* v. *River Coal Co.*, 748 F.2d 1103, 1106 (6th Cir. 1984).

In *In re Lorber Indus. of California, Inc.*, 675 F.2d 1062, 1066 (9th Cir. 1982), the Ninth Circuit, reasoning from the Supreme Court precedents, adopted the following four-part test to determine whether a charge was properly considered a tax: (1) If it imposes an involuntary pecuniary burden (2) imposed by the legislature (3) for public purposes (4) under the police or taxing powers of the government. Although the *Lorber* test as well as the precedents on which it was based

interpreted provisions of the Bankruptcy Act, decisions based on the Bankruptcy Code have also embraced the test as a means of determining whether an obligation is a tax for bankruptcy purposes. *See, e.g.*, *Continental Minerals*, 132 B.R. at 758; *In re O.P.M. Leasing Servs., Inc.*, 60 B.R. 679, 680 (Bankr. S.D.N.Y. 1986).

The priority for administrative expenses given by § 507(a)(1) is to be narrowly construed so as not to undermine unduly the general policy of treating creditors equally, *McFarlin's*, 789 F.2d at 100-01; *Chateaugay*, 130 B.R. at 696, and some courts have noticed a trend to "erode the preferred status of taxes," *see*, *e.g.*, *Lorber*, 675 F.2d at 1067-68; *O.P.M. Leasing*, 68 B.R. at 985.

Obligations similar to those imposed on LTV Steel by the Coal Act have been found to be taxes for bankruptcy purposes. In *River Coal*, a federal statute required operators of coal mines to pay a charge per ton of coal mined to the Abandoned Mine Reclamation Fund, which was to be used to reclaim and restore land and water resources eroded by mining operations. 748 F.2d at 1104-06. Because the charges were "an involuntary exaction for a public purpose," they were considered a tax for bankruptcy purposes. *Id.* Similarly, mandatory contributions to a state insurance fund under a workman's compensation scheme were found to constitute taxes. *Pan American Paper Mills*, 618 F.2d at 161-62. More recently, and under the Bankruptcy Code rather than the Act, mandatory contributions to a state unemployment fund were held to be taxes for bankruptcy purposes. *Continental Mining*, 132 B.R. at 758-59.

The contributions required under the Coal Act satisfy at least the first three of the four *Lorber* factors, and arguably satisfy the fourth. They are involuntary pecuniary burdens imposed by Congress for the stated public purpose of stabilizing the coal industry by "remedy[ing] problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide

health care benefits to retirees in the coal industry." Coal Act § 19142. They may well have a further public purpose in that they "provid[e] benefits to [retired] workers who might otherwise be forced onto public assistance programs." *Continental Minerals*, 132 B.R. at 759.

LTV Steel argues that Congress enacted the Coal Act under the interstate commerce clause, rather than under its police or taxing authority, and thus the obligations imposed are not taxes since the fourth prong of the *Lorber* test is not satisfied. While the *Lorber* test provides a helpful standard by which to determine whether an obligation is a tax, we do not take it to define absolutely such a determination. *See New Neighborhoods, Inc.* v. *West Virginia Workers' Compensation Fund*, 886 F.2d 714, 720 (4th Cir. 1989) (legislative power invoked "not determinative"). Moreover, although Congress found that the stability of the coal industry affected interstate commerce, *see* Coal Act § 19142, it never explicitly invoked any legislative power. In fact, there is considerable reason to believe that Congress intended such obligations to be imposed under the taxing power, or at least to be exercises of both powers simultaneously. The statutory language was codified as Subtitle J of the Internal Revenue Code of 1986, a compilation of numerous previous exercises of the taxing power. Its administration, at least with regard to enforcement of penalty obligations, is under the supervision of the Secretary of Treasury, 26 U.S.C. § 9707, the official charged with enforcement of other taxing power legislation. While the labels and language contained in a statute do not dictate tax status, *see River Coal*, 748 F.2d at 1106, they can provide information as to the powers a legislature is seeking to act under. Given that this legislation could have been enacted pursuant to Congress' taxing power, that no such power was explicitly invoked does not affect whether obligations imposed are to be considered "taxes."

LTV Steel also contends that the Coal Act lacks one allegedly vital characteristic of a taxing statute: a provision

for summary collection and enforcement by the government. But it cites no case in which a lack of such a provision was determinative of whether an obligation imposed was a tax.[5] Rather, as the Supreme Court has noted, "The form of the collection of taxes is left to the discretion of the taxing power; sometimes a lien is provided, sometimes a summary method of collection is awarded; in other cases, an action for debt is given . . ." *Anderson*, 203 U.S. at 493.

Admittedly, the vast majority of obligations found to be taxes for bankruptcy purposes have included some form of mechanism for enforcement by the government. However, the Coal Act itself is not devoid of such provisions; under the Coal Act, the Secretary of Treasury is directed to assess a penalty of $100 per day per assigned eligible beneficiary if a signatory fails to make payment, 26 U.S.C. § 9707. Furthermore, the Secretary of Health and Human Services is charged with assigning eligible beneficiaries to signatories, assessing

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5. Contrary to LTV Steel's assertions in its reply brief, *Feiring* did not characterize the government's ability to enforce statutory obligations as "key"; it merely noted that "the tax may be summarily collected by distraint of the property of either the seller or the buyer." 313 U.S. at 287. Moreover, the context for this statement was a discussion of whether a sales tax on sellers was "less a tax laid on the seller because [it] places a like burden in the alternative on the purchaser," *id.*, and so the reference to summary collection procedures was background only.

Nor does *In re Payne*, 27 B.R. 809 (Bankr. D. Kan. 1983), also cited by LTV Steel, hold government involvement dispositive of this issue. While the failure of a statute to provide for an automatic lien was considered a "non-tax characteristic" contributing to the court's determination that the obligation in question was not a tax, it was merely one factor in the totality of the decision. *Id.* at 817-19.

the annual payments, and generally administering the entire scheme. 26 U.S.C. §§ 9704, 9706. Thus, although non-existence of such mechanisms would not be dispositive, there are provisions for substantial government involvement. Overall, the Coal Act obligations are appropriately described as "taxes" due to their overwhelmingly involuntary nature, their explicitly stated public purpose, and their obvious potential to be imposed pursuant to the taxing power.

Such a result is consistent with the general aims of granting priority to administrative expenses. "Administrative expenses should include taxes which the trustee incurs in administering the debtor's estate . . ." *O.P.M. Leasing*, 68 B.R. at 984. Although using this rationale to classify these obligations as "taxes" would be circular, there is no doubt that the charges incurred by LTV Steel not only are a result of its association with previous collective bargaining agreements, but also are a direct consequence of its continued corporate existence; the Coal Act only imposes obligations on signatories which are still "in business."[6] Thus, the charges stem directly from LTV Steel's continued operation in Chapter 11, and as such are costs of doing business best classified as "administrative expenses" within the Bankruptcy Code scheme.

Other action by Congress provides at least collateral support for the conclusion that obligations imposed by the Coal Act should be given priority. On June 16, 1988, Congress passed the Retiree Benefits Bankruptcy Protection Act of 1988. Section 2 of that act amended the Bankruptcy Code to include a new § 1114, which provided for continued payment by debtors in Chapter 11 of, and allowed administrative

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6. Accordingly, LTV Steel's continued assertions that these obligations are solely a result of pre-petition operations are inaccurate.

expense status for, payments for retiree benefits. 11 U.S.C. § 1114(e). While Congress specifically exempted cases commenced prior to enactment from application of this section and it is thus is not operative in this case,[7] the amendment evidences a strong Congressional intent to accord priority to retiree benefit payments. An interpretation that the Coal Act payments are entitled to first priority is appropriate given this Congressional policy.

LTV Steel also argues that the obligations imposed by the Coal Act were not "incurred by the estate," and thus are not entitled to priority under § 503(b)(1)(B). This contention is merely a restatement of the above claim that the Coal Act obligations arose pre-petition, and is dispelled by the same reasoning. *See supra.*

Thus, the payments required under the Coal Act are properly classified as taxes under § 503(b)(1)(B) and any such obligations imposed before confirmation are entitled to first priority under § 507(a)(1).

Defendants, in a footnote in their answering brief, request partial summary judgment on the issue of the operation of the Coal Act. Such relief is inappropriate since, as defendants themselves admitted in their brief, they have submitted no formal motion demanding partial summary judgment; however, it is to be noted that the decision rendered today on undisputed facts binds the parties as the law of the case.

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7. Moreover, § 1114 has been specifically held not to require LTV Steel or the Mining Subsidiaries to continue making payments to the 1950 Benefit Trust or the 1974 Benefit Trust after the expiration of the 1984 Wage Agreement. *Chateaugay*, 945 F.2d at 1210.

Conclusion

For the reasons stated above, LTV Steel's motion for partial summary judgment is DENIED. A status conference for this case is hereby set for June 10, 1993 at 9:30 a.m.

SO ORDERED.

May 7, 1993

/s/

JOHN S. MARTIN, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: CHATEAUGAY CORPORATION, REOMAR, INC., THE LTV CORPORATION, *et al.*,
Debtors.

In Proceedings For a Reorganization Under Chapter 11
Case Nos. 86 B 11270-11334, 86 B 11402, and 86 B 11464 (BRL)

LTV STEEL COMPANY, INC., BCNR MINING CORPORATION, NEMACOLIN MINES CORPORATION, and TUSCALOOSA ENERGY CORPORATION,

Plaintiffs,

– versus –

DONNA E. SHALALA, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOSEPH P. CONNORS, SR., MARTY D. HUDSON, THOMAS O. S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY, JOHN DOE, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED FUND; and THE UNITED MINE WORKERS OF AMERICA COMBINED FUND,

Defendants.

93 Civ. 0554 (JSM)

MEMORANDUM ORDER

JOHN S. MARTIN, JR., District Judge:

In a Memorandum Opinion and Order dated May 11, 1993 in this case, this Court denied plaintiff LTV Steel Company's motion for partial summary judgment on Count Three of its

complaint, which sought a declaratory judgment as to the application of newly enacted legislation. Although defendants did not cross-move for partial summary judgment on that claim, the Court noted that its adjudication essentially removed that claim from this case. Plaintiff now moves for an entry of final judgment on Count Three of its claim pursuant to Fed. R. Civ. P. 54(b), or in the alternative certification to appeal the Court's decision pursuant to 28 U.S.C. § 1292(b).

There is no valid reason to allow plaintiff to appeal this Court's decision at this time. The parties are currently litigating Counts One and Two of the complaint, which seek to have the legislation in question declared unconstitutional, and it is expected that the Court will rule on cross-motions for summary judgment as to those claims within the next few months, thus disposing of the entire complaint. All three counts deal with application of the exact same legislation to plaintiff, although Counts One and Two involve its constitutionality while Count Three involves its interplay with the bankruptcy laws. Thus, there is a substantial overlapping of subject matter among the three claims, and it would be an inefficient use of judicial resources to have two separate Court of Appeals panels decide these issues separately.

Although plaintiff claims, as it has throughout this litigation, that the obligations imposed on it by the legislation might constitute a severe hardship, we note that an officer of plaintiff testified before the Bankruptcy Court at a confirmation hearing that the obligations had already been considered in constructing the reorganization plan and that plaintiff would waive the condition precedent to effectiveness of the plan. Aside from the fact that this testimony appears to be at odds with what was previously represented to this Court, the testimony makes clear that the obligations imposed do not constitute the kind of severe hardship which might necessitate the piece-meal litigation that comes with separately appealed issues in a case. In addition, the Court notes that the delay imposed by keeping the issues together is

likely to be only a few months, during which time plaintiffs will only have to pay monthly premiums which will commence in October 1993 at the earliest.

For the foregoing reasons, plaintiff's motion for entry of final judgment or certification for appeal is DENIED.

SO ORDERED.

August 4, 1993

/s/

JOHN S. MARTIN, JR., U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 246 — August Term, 1990

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* * *

In re CHATEAUGAY CORPORATION,
REOMAR, INC.,
THE LTV CORPORATION, *et al.*,

Debtors.

LTV STEEL COMPANY, INC.,
BCNR MINING CORPORATION,
NEMACOLIN MINES CORPORATION, and
TUSCALOOSA ENERGY CORPORATION,

Plaintiffs-Appellees,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee,

JOSEPH P. CONNORS, SR., DONALD E. PIERCE, JR., WILLIAM MILLER, WILLIAM B. JORDAN and PAUL R. DEAN as trustees of the UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Defendants-Appellants.

Before:

OAKES, *Chief Judge*, MESKILL, *Circuit Judge*, and RESTANI,* *Judge*.

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* Honorable Jane A. Restani, *Judge*, United States Court of International Trade, sitting by designation.

Appeal from a judgment of the United States District Court for the Southern District of New York, Kram *J.*, affirming a judgment of the United States Bankruptcy Court, Lifland, *C.J.* The bankruptcy court determined that the United Mine Workers of America 1974 Benefit Plan and Trust was responsible for the continued payment of certain LTV retiree health benefits.

Affirmed. Judge Restani dissents in a separate opinion.

MESKILL, *Circuit Judge*:

This is an appeal from a judgment of the United States District Court for the Southern District of New York, Kram, *J.*, affirming a judgment of the United States Bankruptcy Court. The bankruptcy court, in orders dated August 1 and 4, 1988, concluded that the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, 102 Stat. 610 (1988) (''Bankruptcy Protection Act'' or the ''Act'') (codified at various sections of 11 U.S.C. § 1101 *et seq.*), did not require LTV Steel Company (LTV Steel), BCNR Mining Corporation, Nemacolin Mines Corporation and Tuscaloosa Energy Corporation (Mining Companies) (collectively, with LTV Steel, ''LTV'') to continue to pay health benefits to their retirees. The bankruptcy court also concluded that the United Mine Workers of America 1974 Benefit Plan and Trust (Benefit Trust) was responsible for the continued payment of retiree health benefits.

We have jurisdiction over this matter pursuant to 28 U.S.C. § 158(d). The bankruptcy court orders were certified pursuant to Bankruptcy Rule 7054(a) and Fed. R. Civ. P. 54(b) on January 15, 1991 by Judge Burton R. Lifland, Chief Judge of the United States Bankruptcy Court for the Southern District of New York. The orders are thus final within the meaning of 28 U.S.C. § 158(d).

We conclude that the Bankruptcy Protection Act does not require LTV to continue payment of the retiree benefits herein at issue. The three mining operations have ceased doing business, the collectively bargained 1984 National Bituminous Coal Wage Agreement (1984 Wage Agreement) has expired, and the continued provision of the retiree health benefits by the Benefit Trust was expressly considered under the 1984 Wage Agreement. We therefore affirm the decision of the district court.

BACKGROUND

The relevant factual and procedural background to this action is summarized in our decision of December 17, 1990, reported at 922 F.2d 86. In that opinion we held that we lacked jurisdiction to hear this matter as it was then presented because the bankruptcy court orders were not final judgments. We remanded the action for certification of the orders pursuant to Rule 54(b). On March 18, 1991, in a decision reported at 928 F.2d 63, we denied the Benefit Trust's Motion for Reinstatement when we were presented with a statement of finality which failed to comply with the requisites of Rule 54(b).

The Benefit Trust has petitioned for reinstatement once again. The order of the bankruptcy court now comports with Rule 54(b) and we are satisfied that these orders are final and our jurisdiction is properly invoked. We, therefore, confront the issue originally presented to us on September 19, 1990. We address whether the Bankruptcy Protection Act requires LTV to continue the provision of health benefits to retirees of the Mining Companies after they ceased operations and the Wage Agreement providing for the payment of those benefits expired.

DISCUSSION

The Bankruptcy Protection Act amended section 608 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1987, to read in pertinent part as follows:

> (a)(1) Subject to paragraphs (2), (3), (4), and (5), and notwithstanding title 11 of the United States Code, the trustee shall pay benefits to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.
>
> . . . .
>
> (3) The trustee shall pay benefits in accordance with this subsection until —
>
> (A) The dismissal of the case involved; or
>
> (B) the effective date of a plan confirmed under section 1129 of such title which provides for the continued payment after confirmation of the plan of all such benefits at the level established under paragraph (2) of this subsection, at any time prior to the confirmation of the plan, for the duration of the period the debtor (as defined in such title) has obligated itself to provide such benefits.
>
> . . . .
>
> (c) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that

> become subject to chapter 11, title 11, United States Code, after October 2, 1986 and before the date of the enactment of the Retiree Benefits Bankruptcy Protection Act of 1988.

Pub. L. No. 99-591, tit. VI, 100 Stat. 3341-74 as amended by Bankruptcy Protection Act, Pub. L. No. 100-334, § 3(a), 102 Stat. 613 (codified at 11 U.S.C. § 1106-note). LTV filed for bankruptcy under Chapter 11 and has not obtained dismissal of the case or approval of any plan of reorganization under section 1129. LTV was still paying benefits on October 2, 1986, the date that triggered the application of the Act. Based on these facts, the Benefit Trust asserts that LTV must continue paying the retiree benefits until a plan of reorganization is approved. We disagree.

The Act expressly states that the trustee in bankruptcy, here LTV, the debtor-in-possession, must continue to "pay benefits to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition [for bankruptcy]." Thus, we must analyze the "plan, fund, or program maintained or established" by LTV before it filed for bankruptcy in order to determine the trustee's obligation to LTV's retired former employees.

The 1984 Wage Agreement provided for the payment of retiree benefits. Article XX of that document is the precise section that governed the continued provision of benefits. Section (a) of Article XX discusses the general purposes of Article XX. Section (b) discusses the 1950 Plans and Trusts, the 1974 Plans and Trusts were covered in section (c), and section (d) of Article XX discusses the term and amounts of employer contributions. Section (a) states, in pertinent part:

> This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, ... The benefits to be provided are as set forth

under separate plans and trusts referred to in Sections (b) and (c) of this Article.

. . . .

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to and within the scope of Section 302(c) of the Labor Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

The Health and Retirement Benefits provision of the Wage Agreement continues to describe, in detail, the 1974 Benefit Trust. It states: "The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article."

In subsection (3) (ii) of section (c), the plan states:

The 1974 Benefit Plan and Trust provides health and other non-pension benefits during the term of this Agreement, to any retired miner under the 1974 Benefit Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in a signatory classified

> employment is no longer in business . . . . For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer
>
> (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and
>
> (b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

In sum, the Mining Companies were obligated to pay retiree benefits under the terms of the Wage Agreement. The Benefit Trust was to pay benefits if the Mining Companies were no longer in business. No provision in the agreement discusses coverage upon the expiration of the Wage Agreement without adoption of a subsequent agreement. The Benefits Trust contends that because LTV, as parent to the signatory Mining Companies, is not "out of business" under the narrow definition set forth in the 1984 Wage Agreement, LTV must continue to pay the retiree benefits during LTV's reorganization.

There are several factors militating against this interpretation. Section 10 of the General Description of the Health and Retirement Benefits, under the heading "Health Care," in Article XX, states "[h]ealth care benefits are guaranteed *during the term of this Agreement* subject to the terms of this Agreement at the level of benefits provided in the 1950

Benefit Plan, the 1974 Benefit Plan, and the Employer Benefit Plan.'' (emphasis added). This portion of the Wage Agreement suggests that the parties are bound by the provisions of the Wage Agreement only as long as the Wage Agreement itself is effective.

The expiration date of the 1984 Wage Agreement was clearly set forth in Article XXIX. It states in pertinent part:

> Except as provided in Article XXVIII, section (b) (Severability Clause), this Agreement shall not be subject to termination by either party signatory hereto prior to 11:59 p.m., January 31, 1988 provided, however, that either the parties of the first part or the party of the second part may terminate this Agreement on or after 11:59 p.m., January 31, 1988 by giving at least sixty days written notice to the other party of such desired termination date.

The language of the above quoted provisions indicates that once LTV terminated the Wage Agreement upon its expiration in 1988, health benefits were no longer guaranteed under the Wage Agreement. There is no intimation that the parties intended LTV's obligation to continue beyond the life of the Wage Agreement. LTV notified the employees of the Mining Companies that it would cease operations without continuance in 1986. LTV notified the Benefit Trust in November and again in December of 1988 that the 1984 Wage Agreement would terminate after January 31, 1988. The 1984 Wage Agreement ceased to be effective after that date. Thus the parties were no longer bound by it as of that date. If LTV is not bound by the terms of the Wage Agreement, LTV has no obligation to pay the retiree health benefits. The Benefit Trust points to no other agreement or provision within the 1984 Wage Agreement that would suggest a contrary result.

Based on the analysis set forth above, the ''plan, fund, or program maintained or established'' by the Mining Companies at the time LTV sought protection from creditors under Chapter 11 can be described simply. The Mining Companies guaranteed payment of retiree benefits during the term of the Wage Agreement. The Wage Agreement expired immediately after January 31, 1988. Regardless of the obligations of any other parties, neither the Mining Companies nor LTV Steel were obliged to pay retiree benefits after the termination of the Wage Agreement. The 1984 Wage Agreement was the plan in effect at the time LTV sought protection under Chapter 11. The Bankruptcy Protection Act requires that during reorganization the parties continue to provide benefits according to the plan in effect at the time of the declaration of bankruptcy; the Bankruptcy Protection Act does not alter the terms of that plan. As noted, the plan does not require LTV to pay for benefits after the 1984 Wage Agreement expired. LTV Steel and the Mining Companies, therefore, are not obligated by the Wage Agreement or by statute to continue to pay for retiree benefits. The Benefit Trust has conceded that if it is determined that LTV is not required to pay the retiree health benefits the Benefit Trust is so required.

Our interpretation of the Wage Agreement is consistent with the reasoning of other courts that have confronted the issue of responsibility for retiree benefits under the Wage Agreement. The *Royal Coal* cases denote this.

In *District 29, United Mine Workers of America* v. *Royal Coal Company* (*Royal Coal I*), 768 F.2d 588 (4th Cir. 1985), it was determined that the coal company's responsibility to provide health benefits to retired employees under a negotiated Wage Agreement terminated with the expiration of that Wage Agreement. Although this decision was based on the National Bituminous Coal Wage Agreements of 1978 and 1981, those agreements are substantially similar to the 1984

Wage Agreement at issue herein. In *Royal Coal I*, as in the instant case, the company ceased mining operations during the term of the wage agreement in effect at the time. The company did not enter into a subsequent wage agreement to provide health benefits to retired employees. *Id.* at 589. The retired employees sued the coal company and the 1974 Benefit Trust to force one of the two defendants to continue to provide the health benefits.

In deciding *Royal Coal I*, the Fourth Circuit looked to the intent of the parties when they entered into the contract to determine whether they intended the employer's obligations to continue beyond the expiration of the collective bargaining agreement. *Id.* at 590. The Court, after carefully examining the language of the Wage Agreement and relevant case law, held that "[the company's] obligation to provide health benefits . . . to its retired . . . coal miners under the 1978 and 1981 Wage Agreements does not extend beyond the expiration of those Agreements." *Id.* at 592; *see also District 17, Dist. 29, Local Union 7113, and Local Union 6023, United Mine Workers of America* v. *Allied Corp.*, 765 F.2d 412 (4th Cir.), *cert. denied*, 473 U.S. 905 (1985).

In 1987, building on *Royal Coal I*, the Fourth Circuit again confronted the issue of the continued provision of retiree health benefits. In *District 29, United Mine Workers of America* v. *United Mine Workers of America 1974 Benefit Plan & Trust* (*Royal Coal II*), 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988), the court held that the 1974 Benefit Trust was required to provide retiree health benefits when the employer was still "in business" as defined in the Wage Agreement, but was no longer legally obligated to pay the benefits. *Id.* at 283. Again the court looked to the intent of the parties and concluded that "the intentions of the parties in providing for retirement health benefits was to guarantee their provision for life." *Id* at 282. After acknowledging that

the former employer was no longer legally responsible for the provision of retiree health benefits, the court held that "[t]o construe the contract to create no liability on the part of the 1974 Benefit Plan would have the effect of defeating the expressed intention to provide lifetime benefits." *Id.* at 283. The court thereafter found the 1974 Benefit Trust responsible for the continued provision of health benefits.

As noted above, the 1984 Wage Agreement is substantially similar to the 1978 and 1981 Wage Agreements with respect to the plan for the provision of retiree health benefits. The plans established under these Wage Agreements have been interpreted consistently by the courts, and it uniformly has been held that an employer is not legally responsible for the provision of retiree health benefits after the expiration of a wage agreement. *See Royal Coal II*, 826 F.2d 280; *Royal Coal I*, 768 F.2d 588; *United Mine Workers of America Int'l Union by Rabbit* v. *Nobel*, 720 F.Supp. 1169 (W.D. Pa. 1989), *aff'd, Appeal of Bituminous Coal Operators' Ass'n*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied sub nom. Bituminous Coal Operators' Ass'n* v. *United Mine Workers of America Int'l Union by Rabbit,* 111 S.Ct. 1102 (1991); *Schifano* v. *United Mine Workers of America 1974 Benefit Plan & Trust*, 655 F.Supp. 200 (N.D.W. Va. 1987). These same courts have held that the Benefit Trust is liable for the continued provision of retiree benefits. Thus, even before the enactment of the Bankruptcy Protection Act courts interpreted the plan for the provision of retiree health benefits to obligate the employer only as long as the Wage Agreement was in effect; the Benefit Trust was required to provide the benefits thereafter. This is consonant with the conclusion we reach today.

The legislative history of the Bankruptcy Protection Act does not suggest an interpretation other than the one we have reached. The Bankruptcy Protection Act clearly was

designed to "provide specific protections under the Bankruptcy Code for certain insurance benefits of retired employees." S. Rep. No. 119, 100th Cong., 2nd Sess. 3, *reprinted in* 1988 U.S. Code Cong. & Admin. News 683, 685. As numerous legislators noted, the Act was created to "insure that promises made to employees during their working years are not broken during their retirement years." 133 Cong. Rec. H1257 (daily ed. Mar. 11, 1987) (remarks by Representative Frost). Central to the discussion was the belief that companies in bankruptcy could not legally cease to provide benefits demanded under the collectively bargained contracts in effect. *See, e.g.*, 133 Cong. Rec. H1262 (daily ed. Mar. 11, 1987) (remarks by Representative Eckart) ("Bankruptcy court has become an increasingly popular vehicle allowing companies to renege on their contractual obligations to their retired workers."); id. (remarks by Representative Regula) ("Companies must be put on notice that they cannot unilaterally ignore their legal obligations to their former employees."); 132 Cong. Rec. H5259 (daily ed. July 31, 1986) (remarks by Representative Nowak) ("I do not believe that the bankruptcy laws were intended to shield companies and allow them to breach their legal duties to individuals in this manner.").

Here the retired employees are guaranteed provision of health benefits for life under the collective bargaining agreement. That agreement has been interpreted to mean that if the Wage Agreement terminates the benefits are still provided, but they are provided by the Benefit Trust, instead of by the companies. The Mining Companies ceased operations in 1986. The 1984 Wage Agreement expired in 1988. Upon its expiration, the burden for the provision of retiree health benefits shifted to the Benefit Trust. There is no cessation of benefits, there is no termination of benefits. Whether the plan is able to fund fully the benefits is a separate issue. The

retired employees are receiving exactly what they bargained for in the 1984 Wage Agreement.

CONCLUSION

In sum, the Bankruptcy Protection Act requires that companies in Chapter 11 bankruptcy continue to provide benefits to retired employees in conformity with the plan or fund in existence at the time bankruptcy was declared. The 1984 Wage Agreement was the plan in effect when LTV sought protection under Chapter 11, thus the terms of the 1984 Wage Agreement govern the provision of retiree benefits. According to the terms of the Wage Agreement, the Mining Companies were responsible for the provision of the benefits during the term of the Wage Agreement. When that Agreement expired, however, that obligation shifted to the Benefit Trust. The Benefit Trust is now responsible for the continued provision of the retiree health benefits. This conclusion is consistent with our reading of the Bankruptcy Protection Act, the legislative history to that Act, and the relevant case law.

RESTANI, *Judge:* I dissent.

I.

According to the plain language of section 3 of the Retiree Benefits Bankruptcy Protection Act of 1988 (''Bankruptcy Protection Act'' or ''the Act''), ''the trustee shall pay [health] benefits to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition, . . . until . . . the dismissal of the case involved; or . . . the effective date of a plan confirmed under

section 1129 . . . .''[1] The Act also provides that the level of benefits may be modified if there is an agreement on modification, or the bankruptcy court finds modification is necessary to reorganization and ''the balance of equities clearly favors the modification.'' Bankruptcy Protection Act § 3(a)(2)(A); § 3(a)(2)(B); 11 U.S.C. § 1113(b)(1)(A). LTV et al., debtors in possession, have all the rights and duties of a ''trustee,'' with certain exceptions not relevant to this appeal. 11 U.S.C. §§ 1107(a), 1114(e)(1).

The district court decided, in essence, that although the Act applies to health benefits that are terminable at will, it does not apply to health benefits that are provided pursuant to a contract obligation which is interpreted to have expired. I would reverse this decision as I do not find any intent on the part of Congress to distinguish between a contract right which never existed and one which has terminated.[2]

In reaching its conclusion that LTV is not responsible for the continued payment of LTV retiree health benefits, the district court did not quote the statute. Rather, the court relied on two pieces of legislative history which do not address whether a debtor in possession continues to be liable for benefits after the expiration of a bargained for collective agreement. The first is a comment of Senator Byrd to the

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1. The Bankruptcy Protection Act is codified in the note following 11 U.S.C. § 1106. It was enacted in Public Law Number 99-591 on October 30, 1986 and amended by Public Law Numbers 100-41 (May 15, 1987), 100-99 (August 18, 1987) and 100-334 (June 16, 1988).

2. *See infra* note 3 and accompanying text (regarding interpretation of the Wage Agreement at issue).

effect that companies in Chapter 11 "have a legal and contractual obligation to their retirees . . . This legislation will not guarantee continuation of these benefits, but it will provide a mechanism that will allow the retirees' position to be heard . . ." 133 Cong. Rec. 3,732 (1987). The second comment was that of Senator Heinz that "[t]he bill will protect retirees from unilateral termination of benefits by a company filing a Chapter 11 bankruptcy petition." 134 Cong. Rec. 12,700 (1988). The district court then concluded that "[t]he legislative history reveals that the Retiree Benefits Bankruptcy Protection Act of 1988 does not require LTV to continue to pay retiree benefits in this case." Joint Appendix at 655. It is apparent from their lack of reliance on the statute that both the district court and LTV believe the bare words of the statute call for LTV to continue paying benefits. The majority takes a different approach, which at the outset focuses on statutory language, but it applies the statutory language in a circular manner, thereby defeating the purpose of the statute.

Furthermore, both the district court and the majority find that, despite the Act, the Benefit Trust, rather than LTV, must pay retiree benefits under the terms of the Wage Agreement. They base this conclusion primarily on the *Royal Coal* cases.[3] In the *Royal Coal* cases the Fourth Circuit held that a solvent mining company which had sold all of its mining operations

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3. *District 29, United Mine Workers of America* v. *Royal Coal Co.* (*Royal Coal I*), 768 F.2d 588 (4th Cir. 1985) and *District 29, United Mine Workers of America* v. *United Mine Workers of America 1974 Benefit Plan & Trust* (*Royal Coal II*), 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988).

without transferring to the purchasers its obligations to pay retiree health benefits, and which did not sign the 1981 Wage Agreement, was not liable for such benefits after the expiration of the 1981 Wage Agreement. *See Royal Coal I*, 768 F.2d at 592. The Benefit Trust, which is funded by Wage Agreement signatory employers, was held liable for the health benefits on the basis that the Wage Agreement intended funding of lifetime benefits. The court reached this conclusion despite contract wording which indicated not only that the Benefits Trust's obligation applies "during the terms of this agreement" but also that the obligation depends on both cessation of operations and inability to pay on the part of the employer and its successor. *Royal Coal II*, 826 F.2d at 282-83.

The *Royal Coal* cases, however, deal with the interpretation of the Wage Agreement and not interpretation of the Retiree Protection Act, which was enacted after the *Royal Coal* cases were decided. Furthermore, the Act specifically addresses the event of bankruptcy. The Act provides that the "trustee" (a successor to the employer) must pay. Under *Royal Coal* the Benefit Trust's obligation arises because the obligation of the *employer* (and its successor) ceases. If one accepts the reasoning of the *Royal Coal* cases, the statute cannot be satisfied by payment from the Benefit Trust. That is, payment by the Benefit Trust cannot be payment by the *trustee*.

The legislative history cited by the district court and, more extensively, by the majority, is consistent with the plain language of the Act. The district court and majority, however, have seized upon the concept of the "unilateral" nature of certain terminations of benefits, a concept found in the Heinz statement quoted *supra* at 2-3. This reliance is misplaced. Under the facts at hand, LTV's decision not to

continue its 1984 Wage Agreement obligations to the retirees was no less unilateral than the decision to terminate "at will" benefits, and certainly LTV's original attempt to reject the Wage Agreement pursuant to the trustee's ordinary bankruptcy powers was a unilateral action. But even more persuasive is the absence of the limiting word "unilateral" from the statutory language. Of course the Act does protect workers against unilateral termination of benefits, but the plain language of the statute does not limit it to this purpose only. As explained by the sponsors of the legislation, the Act applies whether or not a collective bargaining agreement is in effect. "*The provisions of section 3 apply to union and nonunion retirees. . . . The benefits subject to these standards are not required to arise from a collective bargaining agreement.*" 134 Cong. Rec. 12,698 (1988) (statement of Sen. Metzenbaum) (emphasis added). "This legislation protects retired employees who are covered by a collective bargaining agreement, *as well as those where no collective bargaining agreement is in effect.*" 133 Cong. Rec. 21,099 (1987) (statement of Sen. Heflin) (emphasis added).

The most telling passage of legislative history is the following:

> [The bill] . . . requires a company to continue paying for these [retiree health] benefits even after the termination of a collective bargaining agreement. Only if a company can prove a modification is absolutely necessary and that it treats everyone fairly can a court, after a hearing, order any modification.

Retiree Benefits Security Act of 1987: Hearings on S. 548 Before the Subcomm. on Courts and Administrative Practice of the Senate Comm. on the Judiciary, 100th Cong., 1st Sess.

14 (1987) (statement of Sen. Metzenbaum). This passage, unlike those cited by the district court, is directly on point. Appellees argue that Senator Metzenbaum was referring to hypothetical agreements which require continuation of retiree health benefits after the agreement terminates. Senator Metzenbaum's statement, however, is replete with references to LTV and its contracts. His statement was without limitation with regard to the terms of any contract. Therefore, I cannot agree with the majority that "[t]he legislative history of the Bankruptcy Protection Act does not suggest an interpretation other than the one we have reached." Slip op. at 13-14.

Accordingly, the Act continues *all* retiree health benefits which are in effect immediately prior to bankruptcy. The Act also states that termination or modification of benefits is not permitted prior to reorganization *unless either the trustee and an authorized representative of the affected parties agree to the modification, or if the trustee convinces the court that such modification is necessary and equitable*. The clear purpose of the Act is to give the bankruptcy court power to resolve the competing interests of retirees, debtors and creditors, if agreement as to continuation and level of benefits cannot be reached. The health benefits of retirees are not to be terminated by any action until the bankruptcy court has time to act. The passages of legislative history cited by the majority do not reveal an intent other than that reflected in the plain language of the statute; that is, despite contractual rights or lack thereof, benefits are to continue on an interim basis until the parties agree or until the bankruptcy court makes the determinations specified in the Act. If Congress intended some distinction between former employees *without contracts* and those *whose contractual rights had expired*, it

simply did not say so. If it had any distinction among employees in mind, it was a distinction between employees of companies which seek protection under the bankruptcy laws and employees of companies who do not. I believe that the majority errs in reading into the statute special exemptions applicable to bargained for benefits, not enunciated by Congress.

II.

I believe the majority also erred in relying in any way on the presence of the Benefit Trust with regard to interpretation of the statute. The Benefit Trust is intended as a last resort for the funding of retiree health benefits. *Royal Coal II* finds the Benefit Trust liable, despite contract language to the contrary, because of the overall purpose of the contract, that is, retirees must be provided for. Here, the Act spells out how provision for retirees is to be made. Moreover, although successor Wage Agreements require funding of the Benefit Trust to meet retiree health benefit requirements, it has not been established that current and future signatories will be able to bear the burden of former signatories throughout the lifetimes of the retirees. This factual issue is not resolved. In any case, given the plain language of the statute, I would find the status of the Benefit Trust irrelevant as to statutory construction.

I do not reach the issue of the contractual liability of the Benefit Trust. If LTV remains obligated to pay benefits under the statutory criteria, the obligation of the Benefit Trust does

not arise.[4] The bankruptcy court has not made the findings which would resolve this issue.

CONCLUSION

I would find LTV liable for payment of benefits unless the bankruptcy court makes the findings required for modification of benefits, as set forth in Section 3(a)(2) of the Retiree Protection Act.

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4. It is interesting to note that even if one accepts the holdings of the *Royal Coal* cases, for companies in bankruptcy the statute restores in large measure the original language of the Wage Agreement, which premises the liability of the Benefit Trust on the *inability* of the employer to pay.

SUBTITLE J — COAL INDUSTRY HEALTH BENEFITS

Chapter
99. Coal industry health benefits.

CHAPTER 99 — COAL INDUSTRY HEALTH BENEFITS

Subchapter

A. Definitions of general applicability.
B. Combined benefit fund.

Subchapter

C. Health benefits of certain miners.
D. Other provisions.

SUBCHAPTER A — DEFINITIONS OF GENERAL APPLICABILITY

Sec.
9701. Definitions of general applicability

§ 9701. Definition of general applicability

(a) Plans and funds. — For purposes of this chapter —

(1) UMWA Benefit Plan. —

(A) In General. — The term ''UMWA Benefit Plan'' means a plan —

(i) which is described in section 404(c), or a continuation thereof; and

(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) **1950 UMWA Benefit Plan.** — The term ''1950 UMWA Benefit Plan'' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) **1974 UMWA Benefit Plan.** — The term ''1974 UMWA Benefit Plan'' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) **1950 UMWA Pension Plan.** — The term ''1950 UMWA Pension Plan'' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) **1974 UMWA Pension Plan.** — The term ''1974 UMWA Pension Plan'' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) **1992 UMWA Benefit Plan.** — The term ''1992 UMWA Benefit Plan'' means the plan referred to in section 9713A.

(5) **Combined fund.** — The term ''Combined Fund'' means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) **Agreements.** — For purposes of this section —

(1) **Coal wage agreement.** — The term ''coal wage agreement'' means —

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) **Settlors.** — The term ''settlors'' means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the ''BCOA'').

(3) **National Bituminous Coal Wage Agreement.** — The term ''National Bituminous Coal Wage Agreement'' means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) **Terms relating to operators.** — For purposes of this section —

(1) **Signatory operator.** — The term ''signatory operator'' means a person which is or was a signatory to a coal wage agreement.

(2) **Related persons.** —

(A) **In general.** — A person shall be considered to be a related person to a signatory operator if that person is —

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) **Time for determination.** — The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July

20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) **1988 agreement operator.**—The term ''1988 agreement operator'' means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) **Last signatory operator.**—The term ''last signatory operator'' means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) **Assigned operator.**—The term ''assigned operator'' means, with respect to an eligible beneficiary

defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) **Operators of dependent beneficiaries.** — For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) **Business.** — For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(d) **Enactment date.** — For purposes of this chapter, the term ''enactment date'' means the date of the enactment of this chapter.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3037.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102-474 (I-IX) and House Conference Report No. 102-1018, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

References in Text

The date of the enactment of this chapter, referred to in subsec. (d), means the date of the enactment of Pub. L. 102-486, which was approved Oct. 24, 1992.

Findings and Declaration of Policy

Section 19142 of Pub. L. 102-486 provided that:

"**(a) Findings.** — The Congress finds that —

"(1) the production, transportation and use of coal substantially affects interstate and foreign commerce and the national public interest; and

"(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

"**(b) Statement of policy.** — It is the policy of this subtitle [enacting this subtitle, amending section 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting this note] —

"(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of

multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

''(2) to allow for sufficient operating assets for such plans; and

''(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.''

SUBCHAPTER B — COMBINED BENEFIT FUND

Part		Part	
I.	Establishment and Benefits.	III.	Enforcement.
II.	Financing.	IV.	Other Provisions.

PART I — ESTABLISHMENT AND BENEFITS

Sec.

9702. Establishment of the United Mine Workers of America Combined Benefits Fund.

9703. Plan Benefits.

§ 9702. Establishment of the United Mine Workers of America Combined Benefit Fund

(a) Establishment. —

(1) In General. — As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

(2) Merger of retiree benefit plans. — As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

(3) **Treatment of plan.** — The Combined Fund shall be —

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(4) **Tax treatment.** — For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

(b) **Board of trustees.** —

(1) **In general.** — For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

(A) one individual who represents employers in the coal mining industry shall be designated by the BCOA;

(B) one individual shall be designated by the three employers, other than 1988 agreement operators, who have been assigned the greatest number of eligible beneficiaries under section 9706;

(C) two individuals designated by the United Mine Workers of America; and

(D) three persons selected by the persons appointed under subparagraphs (A), (B), and (C).

(2) **Successor trustees.** — Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

(3) **Special rules.** —

(A) **BCOA.** — If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

(B) **Former Signatories.** — The initial trustee under paragraph (1)(B) shall be designated by the 3 employers, other than 1988 agreement operators, which the records of the 1950 UMWA Benefit Plan and 1974 UMWA Benefit Plan indicate have the greatest number of eligible beneficiaries as of the enactment date, and such trustee and any successor shall serve until November 1, 1993.

(c) **Plan year.** — The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30,

1993. Each succeeding plan year shall begin on October 1 of each calendar year.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3040.)

§ 9703. Plan benefits

(a) In General. — Each eligible beneficiary of the Combined Fund shall receive —

(1) health benefits described in subsection (b), and

(2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

(b) Health benefits. —

(1) In general. — The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Plan payment rates. —

(A) **In general.** — The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which —

(i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and

(ii) result in aggregate payments for such plan year from the Combined Fund which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

(B) **Reductions.** — The amount determined under subparagraph (A)(ii) for any plan year shall be reduced —

(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

(ii) by the amount reserved for plan administration under subsection (d).

(C) **Increases.** —The amount determined under subparagraph (A)(ii) shall be increased —

(i) by any reduction in the total premium payments required to be paid under

section 9704(a) by reason of transfers described in section 9705,

(ii) by any carryover to the plan year from any preceding plan year which —

(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

(II) the trustees elect to use to pay benefits for the current plan year, and

(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

(3) **Qualified providers.** — The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

(4) **Effective date.** — Benefits shall be provided under paragraph (1) on and after February 1, 1993.

(c) **Death benefits coverage.** —

(1) **In general.** — The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension

Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

(2) **Termination of coverage.**—The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

(d) **Reserves for administration.**—The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

(e) **Limitation on enrollment.**—The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

(f) **Eligible beneficiary.**—For purposes of this subchapter, the term ''eligible beneficiary'' means an individual who—

(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3041.)

PART II - FINANCING

Sec.		Sec.	
9704.	Liability of assigned operators.	9705.	Transfers.
		9706.	Assignment of eligible beneficiaries.

§ 9704. Liability of assigned operators

(a) **Annual premiums.** — Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums —

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) **Health benefit premium.** — For purposes of this chapter —

(1) **In general.** — The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

(2) **Per beneficiary premium.** — The Secretary of Health and Human Services shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of —

(A) the amount determined by dividing —

(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

(ii) the number of such individuals, plus

(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

(3) **Adjustments for medicare reductions.** — If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

(c) **Death benefit premium.** — The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

(d) **Unassigned beneficiaries premium.** — The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

(e) **Premium accounts; adjustments.** —

(1) **Accounts.** — The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and debited with expenditures allocable to such premiums.

(2) Allocations. —

(A) Administrative expenses. — Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

(B) Interests. — Interest shall be allocated to the account established for health benefit premiums.

(3) Shortfalls and surpluses. —

(A) In general. — Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus.

(B) Exception. — Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to —

(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carry-

overs of premiums not used to provide benefits), or

(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

(C) **No authority for increased payments.** — Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

(f) **Applicable percentage.** — For purposes of this section —

(1) **In general.** — The term ''applicable percentage'' means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) **Annual adjustments.** — In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of

the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

(g) Payment of premiums.—

(1) In general.—The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

(2) Deductibility.—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(h) Information.—The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Secretary of Health and Human Services information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary may require to compute any premium under this section.

(i) Transition rules.—

(1) 1988 Agreement Operators.—

(A) 1st year costs.—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

(B) Deficits from merged plans.—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

(C) Failure.—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

(D) Premium reductions. —

(i) 1st year payments. — In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

(ii) Deficit payments. — In the case of a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the ''evergreen clause'' found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

(iii) Limitation. — Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

(iv) Plan years. — Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any

succeeding plan year until such amounts are exhausted.

(E) **Allocations of contributions and refunds.** — Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

(2) **1st plan year.** — In the case of the plan year of the Combined Fund beginning February 1, 1993 —

(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

(3) **Startup costs.** — The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3042.)

§ 9705. Transfers

(a) Transfer of assets from 1950 UMWA Pension Plan.—

(1) In general.—From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

(A) $70,000,000 on February 1, 1993,

(B) $70,000,000 on October 1, 1993, and

(C) $70,000,000 on October 1, 1994.

(2) Reservation.—Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

(3) Use of funds.—Amounts transferred to the Combined Fund under paragraph (1) shall—

(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

(4) **Tax treatment; validity of transfer.** —

(A) **No deduction.** — No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

(B) **Other tax provisions.** — Any transfer pursuant to paragraph (1) —

(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

(5) **Treatment of transfer.** — Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

(b) **Transfers from abandoned mine reclamation fund.** —

(1) **In general.** — The Combined Fund shall include any amount transferred to the Fund under section 402(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

(2) **Use of funds.** — Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3046.)

§ 9706. Assignment of eligible beneficiaries

(a) **In general.** — For purposes of this chapter, the Secretary of Health and Human Services shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which —

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which —

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

(b) **Rules relating to employment and reassignment upon purchase.** — For purposes of subsection (a) —

(1) **Aggregation Rules.** —

(A) **Related person.** — Any employment of a coal industry retiree in the coal industry by a

signatory operator shall be treated as employment by any related persons to such operator.

(B) **Certain employment disregarded.** —Employment with —

(i) a person which is (and all related persons with respect to which are) no longer in business, or

(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

(2) **Reassignment upon purchase.** — If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

(c) **Identification of eligible beneficiaries.** — The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the

Secretary of Health and Human Services a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

(d) Cooperation by other agencies and persons. —

(1) Cooperation. — The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Secretary of Health and Human Services in providing information which will enable the Secretary to carry out his responsibilities under this section.

(2) Providing of information —

(A) In general. — Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Secretary of Health and Human Services in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Secretary shall be advised whether the search disclosed the information requested, and, if so, such information

shall be promptly transmitted to the Secretary, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Secretary shall be so advised.

(B) **Limitation.** — Any information provided under subparagraph (A) shall be limited to information necessary for the Secretary to carry out his duties under this section.

(3) **Trustees.** — The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Secretary in furnishing, or assisting the Secretary to obtain, any information the Secretary needs to carry out the Secretary's responsibilities under this section.

(e) Notice by Secretary. —

(1) **Notice to fund.** — The Secretary of Health and Human Services shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

(2) **Other notice.**—The Secretary of Health and Human Services shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

(f) **Reconsideration by Secretary.**—

(1) **In general.**—Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Secretary of Health and Human Services detailed information as to the work history of the beneficiary and the basis of the assignment.

(2) **Review.**—An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Secretary of Health and Human Services shall conduct such review if the Secretary finds the operator provided evidence with the request constituting a prima facie case of error.

(3) **Results of review.**—

(A) **Error.**—If the Secretary of Health and Human Services determines under a review under paragraph (2) that an assignment was in error—

(i) the Secretary shall notify the assigned operator and the trustees of the Combined

Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Secretary shall review the beneficiary's record for reassignment under subsection (a).

(B) **No error.** — If the Secretary of Health and Human Services determines under a review conducted under paragraph (2) that no error occurred, the Secretary shall notify the assigned operator.

(4) **Determinations.** — Any determination by the Secretary of Health and Human Services under paragraph (2) or (3) shall be final.

(5) **Payment pending review.** — An assigned operator shall pay the premiums under section 9704 pending review by the Secretary of Health and Human Services or by a court under this subsection.

(6) **Private actions.** — Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Secretary.

(g) **Confidentiality of information.** — Any person to which information is provided by the Secretary of Health and Human Services under this section shall not

disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3047.)

PART III — ENFORCEMENT

Sec.
9707. Failure to pay premium.

§ 9707. Failure to pay premium

(a) **General rule.** — There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

(b) **Amount of penalty.** — The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day in the noncompliance period with respect to any such failure.

(c) **Noncompliance period.** — For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to pay any premum or installment thereof, the period —

(1) beginning on the due date for such premium or installment, and

(2) ending on the date of payment of such premium or installment.

(d) Limitations on amount of penalty. —

(1) In general. — No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence, would have known, that such failure existed.

(2) Corrections. — No penalty shall be imposed by subsection (a) on any failure if —

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Waiver. — In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

(e) **Liability for penalty.** — The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

(f) **Treatment.** — For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3050.)

PART IV — OTHER PROVISIONS

Sec.
9708. Effect on pending claims or obligations.

§ 9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the "evergreen" clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051.)

SUBCHAPTER C — HEALTH BENEFITS OF CERTAIN MINERS

Part
I. Individual employer plans.
II. 1992 UMWA benefit plan.

PART I — INDIVIDUAL EMPLOYER PLANS

Sec.
9711. Continued obligations of individual employer plans.

§ 9711. Continued obligations of individual employer plans

(a) Coverage of current recipients. — The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

(b) Coverage of eligible recipients. —

(1) In general. — The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal

wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) **Coverage.** — Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

(c) **Joint and several liability of related persons.** — Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

(d) **Managed care and cost containment.** — The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

(e) **Treatment of noncovered employees.** — The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

(f) **Eligible beneficiary.** — For purposes of this section, the term ''eligible beneficiary'' means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

(g) **Rules applicable to this part and part II.** — For purposes of this part and part II —

(1) **Successor.** — The term ''last signatory operator'' shall include a successor in interest of such operator.

(2) **Reassignment upon purchase.** — If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such

assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051.)

PART II — 1992 UMWA BENEFIT PLAN

Sec.
9712. Establishment and coverage of 1992 UMWA Benefit Plan.

§ 9712. Establishment and coverage of 1992 UMWA Benefit Plan.

(a) Creation of plan. —

(1) In general. — As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereunder be the number set by the settlors.

(2) **Treatment of plan.** — The 1992 UMWA Benefit Plan shall be —

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(b) **Coverage requirement.** —

(1) **In general.** — The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) **Eligible beneficiary.** — For purposes of this section, the term "eligible beneficiary" means an individual who —

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

(c) Health benefits. —

(1) In general. — The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Managed care. — The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

(3) **Major elements of rules.** — Elements described in this paragraph are —

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting the benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function ''appropriateness of service'' protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

(4) **Last signatory operators.** — The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

(5) **Standards of quality.** — Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established —

(A) by the settlors, or

(B) by the United Mine Workers of America and last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

(d) Guarantee of benefits.—

(1) In general.—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be appled uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

(A) the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

(B) the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefits Plan, and

(C) the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual

prefunding premium that is greater than the premium otherwise applicable.

(2) **Adjustments.** — The 1992 UMWA Benefit Plan shall provide for —

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

(3) **Additional liability.** — Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

(4) **Joint and several liability.** — A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

(5) **Deductibility.** — Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(6) **1988 last signatory operator.**—For purposes of this section, the term ''1988 last signatory operator'' means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3053.)

SUBCHAPTER D—OTHER PROVISIONS

Sec.
9721. Civil enforcement.
9722. Sham transactions.

§ 9721. Civil enforcement

The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3055.)

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IN THE SUPREME COURT OF THE UNITED STATES
October Term 1995

LTV STEEL COMPANY, INC., *et al.*,

Petitioners

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether LTV's statutory obligations under the Coal Act, enacted in 1992, should be characterized as pre-petition claims in the LTV bankruptcy, a proceeding in which the bankruptcy petition was filed in 1986, six years before the Coal Act was passed.

2. Whether the Coal Act, in establishing new trust funds and a new *statutory* obligation for former employers to finance retiree health care, violates separation of powers principles when applied to a coal operator that years earlier obtained a judgment that it has no further *contractual* obligation to contribute to different multiemployer health plans established in collective bargaining.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term 1995

No. 95-63

LTV STEEL COMPANY, INC., *et al.*,

Petitioners

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENTS THE UMWA COMBINED BENEFIT FUND AND ITS TRUSTEES IN OPPOSITION

Respondents United Mine Workers of America Combined Benefit Fund and its Trustees ("Combined Fund") submit this brief in opposition to the petition for a writ of certiorari in this case.

STATEMENT OF THE CASE

In 1986, petitioners[1] sought protection under the Bankruptcy Code for the admitted purpose of trying to rid themselves of contractual commitments and promises they had made to the hundreds of coal and steel retirees who had made LTV one of the largest coal and steel operators in the world. LTV was successful in this effort, and in 1993 emerged from bankruptcy as the third largest steel company in the world. Due in significant part to the actions of LTV and others in dumping their contractual retiree benefit obligations onto collectively bargained multiemployer benefit funds that continued to be financed by a dwindling number of participating companies, a financial crisis developed in the coal industry retiree health system. Congress determined that that crisis could not be resolved through collective bargaining and that therefore a new statutory system should be devised for the delivery of health care to coal industry retirees and their dependents. The Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") was the result. The statute was enacted in 1992, six years after LTV's bankruptcy was filed.

Having successfully shed its contractual obligations and reorganized as a substantial company, LTV now seeks once again to avoid its obligations, this time those imposed under the Coal Act. LTV relies on two factually and legally flawed premises; first, that the obligations imposed by Congress for the first time in 1992, six years *after* LTV filed its bankruptcy petition, constitute pre-petition claims

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[1]Petitioners are LTV Steel Company ("LTV Steel"), BCNR Mining Corporation ("BCNR"), Nemacolin Mines Corporation ("Nemacolin"), and Tuscaloosa Energy Corporation ("Tuscaloosa") (collectively "LTV").

dischargeable in bankruptcy, and second, that Congress' imposition of statutory obligations somehow violates the separation of powers doctrine because it conflicts with judicial decisions declaring that LTV's prior *contractual* obligations had come to an end with the expiration of the last collective bargaining agreement that LTV signed. LTV makes the latter argument despite its acknowledgment that the Coal Act did not direct the reversal of any judicial decision.

In an effort to obtain review in this Court, LTV offers a statement of the case that is incomplete, misleading, and factually inaccurate. To correct the misimpressions created by LTV and to explain the background of the Coal Act and this dispute, the Combined Fund presents the following statement of the case.

LTV starts with the assertion that the court of appeals held that LTV's *contractual* obligations were sufficient to support the imposition of post-confirmation liability on LTV. As even a cursory review of the opinion below reveals, the court did no such thing. Rather, the Second Circuit's holding is that the statutory liability imposed by Congress for the first time in 1992 is not a pre-petition obligation of LTV.

LTV's complaint that it is now burdened by retiree obligations that it sought to avoid in filing its bankruptcy petition is disingenuous. LTV succeeded in avoiding its collectively bargained obligations and, as a result, emerged as an entity with substantial assets. Indeed, although LTV sought to persuade the district court that the imposition of Coal Act obligations would destroy its stability and render its plan of reorganization unconfirmable, it was forced on appeal to abandon that position after its Chief Financial Officer acknowledged at the confirmation hearing that LTV had taken

these obligations into account in formulating its plan and could meet those obligations if required to do so. On the strength of this representation, the LTV plan was confirmed in 1993.

More troubling is the assertion made by LTV in footnote 2 of the petition that its "retirees will be paid from the Fund regardless of LTV Steel's participation." This cavalier statement ignores the fact that the Coal Act is predicated on the assumption that companies that continue in business and have the financial ability to contribute to the Fund will do so. If LTV is permitted to avoid its statutory obligations, it can be predicted with certainty that other companies will follow suit, and the very crisis that Congress sought in the Coal Act to avoid will be re-created, with the result that the Combined Fund may not be able to support the retirees and they may become the burden of the public and not of the entities that Congress determined should bear the responsibility.

LTV makes a number of material misstatements in its Statement of the Case that require correction. First, the contention that the Combined Fund "chose" not to file a claim in the bankruptcy proceeding, and instead to "wait and seek payment in full" after the bankruptcy was over is both false and misleading. LTV filed this action on January 29, 1993, *before* the February 1 date on which the Combined Fund began providing benefits under the Coal Act. The funds created by the Coal Act were not even fully operational at the time this action was commenced and were not in a position to assert a claim even if the bar date in the bankruptcy had not passed (which it had, before the Coal Act was even enacted). Second, the statement conveniently ignores the holdings of the district court and the court of appeals that the

obligations imposed by the Coal Act are not pre-petition claims; they are taxes that arise annually and represent administrative obligations of the estate during the bankruptcy and obligations of the surviving entity thereafter. LTV thus complains that the Fund did not do something that the district court and the court of appeals held would be at least unnecessary and possibly improper.

In addition, and more important, LTV misstates the holding of the court of appeals. Contrary to the statement on page 7 of the petition, the court did *not* find that liabilities under the Coal Act "arise from pre-petition acts of LTV Steel." Rather, the court held that those liabilities arise from the Coal Act itself, before which LTV had no obligation to make payments to the then-nonexistent Combined Fund. Ironically, LTV's argument to the contrary is antithetical to the central theme of the constitutional challenge that LTV pursued in the courts below -- that, prior to the passage of the Coal Act, LTV had no coal retiree obligations and the Coal Act unfairly subjected LTV to such obligations. This Court need look no further than LTV's own arguments to confirm the correctness of the Second Circuit's conclusion that the Coal Act obligations are new, post-petition obligations.

Third, LTV claims incorrectly that the decision of the Second Circuit creates a conflict between the Bankruptcy Code and the Coal Act. Quite the contrary is true. The Second Circuit, in finding that Coal Act obligations are taxes within the meaning of the Bankruptcy Code, reconciled the two statutes by providing that Coal Act claims would be

treated precisely as the Bankruptcy Code provides they should be treated.[2]

Finally, LTV's argument that the separation of powers doctrine is implicated by the Second Circuit's decision is without merit. Apart from the fact that LTV did not properly preserve this issue for appeal, LTV itself recognizes that the "Coal Act by its terms does not set aside any prior judgment [and] there is no indication that Congress intended such a result." Pet. 17. It necessarily follows that a decision by the courts below enforcing LTV's Coal Act obligations does not direct a different result. LTV's judgment relieving it of its contractual obligations remains unaffected.[3]

Critical to an evaluation of the Second Circuit's decision below is an accurate description of the Coal Act and the events that gave rise to the action by Congress that LTV now challenges.

Following an extensive inquiry in 1990 by the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal

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[2]For this reason, LTV's remark that Congress did not explicitly provide in the Coal Act that obligations under the statute should receive special consideration is beside the point. Congress did not need to do so. It created a statutory tax, and the Bankruptcy Code makes clear how such taxes are to be treated.

[3]LTV's persistent use of terms implying that the Coal Act resurrected its prior contractual obligations (*see, e.g.*, Pet. 9, asserting that the decision of the Second Circuit "reimpose[s]" liability on LTV Steel) are specious. Neither the words nor the effect of the statute revives contractual obligations. As the Second Circuit held, the statute creates new obligations, which is precisely why LTV, despite the end of its contractual liabilities, is obligated to make statutory contributions under the Coal Act.

Commission") and its own thorough review of the coal industry's collectively-bargained multiemployer retiree health care trusts, Congress passed the Coal Act. The Coal Act is codified as part of the Internal Revenue Code, at 26 U.S.C. §§ 9701, *et seq*. Through the new statute, Congress sought to resolve the severe financial crisis that threatened the collectively-bargained trusts. For more than 40 years, these multiemployer health benefit plans had provided retiree health care to retired miners and their dependents, in accordance with a series of collective bargaining agreements between the United Mine Workers of America ("UMWA") and various employers in the bituminous coal industry. These agreements are known as the National Bituminous Coal Wage Agreements or "NBCWAs."

At the time Congress enacted the Coal Act, there were two multiemployer trusts that provided health care for retired coal industry retirees and their dependents. These were the UMWA 1950 Benefit Trust which generally covered miners who retired before January 1, 1976, and the UMWA 1974 Benefit Trust which generally covered miners who retired on or after January 1, 1976 and were not receiving benefits from their former employers' individual company plan. Under the 1978 and later NBCWAs, miners who retired in 1976 or thereafter, were to receive health care coverage from their former employers' individual company plans, and the UMWA 1974 Benefit Trust was retained as an "orphan" plan to cover retirees whose former employers were no longer in business.

The financial crisis affecting these trusts reached its peak during the decade preceding the Coal Act's passage. It jeopardized the continued provision of health care benefits to more than 100,000 retired miners and their dependents. The crisis had several causes. First, as each successive NBCWA

expired, numerous employers that had signed the 1978 NBCWA or later NBCWAs and remained in business refused to sign new NBCWAs and refused to continue providing health care to their former employees. Instead, they sought to dump thousands of their retirees into the existing multiemployer health benefit plans, where their health care would be financed by other employers.[4] As a result, the trusts incurred additional liabilities and the remaining NBCWA coal operators had to pay higher contributions to fund coverage for retirees who had been abandoned by their former employers. This created a strong financial incentive for the remaining NBCWA coal operators to follow suit, thereby further undermining the trusts' financial base.[5]

Second, numerous coal industry workers retired from companies that went out of business. These "orphan" retirees were considered an industry-wide responsibility that fell on an increasingly small number of employers. Third, several

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[4]This kind of dumping of retirees is discussed in *District 29, UMWA v. UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280 (4th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988); and *UMWA v. Nobel*, 720 F. Supp. 1169 (W.D. Pa. 1989), *aff'd*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

[5]LTV is perhaps the best example of the employers who dumped their retirees on the former plans. In June 1988, LTV sued the UMWA and the 1974 Benefit Trust to establish that, after the expiration of the 1984 NBCWA, LTV had no continuing contractual obligation to provide health care to the retirees that LTV had been covering through its individual company plan. LTV prevailed in this litigation, did not sign the 1988 NBCWA, and dumped hundreds of its retirees into the 1974 Benefit Trust, where their health benefits were financed by other employers. *See In re Chateaugay Corp.*, 111 B.R. 399, 402 (S.D.N.Y. 1990), *aff'd*, 945 F.2d 1205 (2d Cir. 1991), *cert. denied*, 502 U.S. 1093 (1992).

employers negotiated so-called "non-conforming agreements," which purportedly allowed the companies to reduce or discontinue contributions to one or both of the multiemployer health benefit plans. Although these agreements now have been held ineffective to relieve these employers of their prior contractual obligations,[6] they nonetheless contributed to the financial strain on the multiemployer plans. Finally, the cost of providing health benefits increased dramatically, and that increase significantly affected the UMWA health plans' annual expenses.

The uncertainty of continued health benefits for active and retired UMWA miners led to substantial labor strife in the nation's bituminous coal mining regions. One of the most serious of these labor disputes, a ten-month strike by the UMWA against the Pittston Coal Company, was settled only after the Secretary of Labor intervened. The Coal Commission was established by the Secretary as part of the settlement to analyze the retiree health care crisis and recommend a solution.

In November 1990, the Coal Commission submitted its findings and recommendations. In its report, the Coal Commission stated that ensuring the continued provision of health benefits to UMWA retirees and their dependents should be the primary objective of any proposed solution. The Commission also recognized that, because so many companies were no longer signatories to the NBCWA and were no longer supporting their retirees' health care, the collective bargaining process was inadequate to provide a long-term

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[6]*See UMWA 1974 Pension Trust v. Pittston Co.*, 984 F.2d 469 (D.C. Cir.), *cert. denied*, 113 S. Ct. 3039, 3040 (1993).

solution to the health care crisis. Accordingly, the Commission urged that Congress adopt a legislative solution.

Following the Coal Commission's report, Congress undertook its own intensive two-year examination of the subject. The Coal Act was the final product of those deliberations. In enacting the Coal Act, Congress found that

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

106 Stat. 3037, *see* 26 U.S.C. § 9701 (historical note). Congress further stated that the policy of the Coal Act is:

> to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Id.

In the Coal Act Congress created two new trust funds to provide health care for retired miners and their dependents. One of these trusts, Respondent Combined Fund, is the product of the statutory merger of the two pre-existing collectively-bargained multiemployer health care trusts.

Congress directed that the UMWA 1950 Benefit Trust and the UMWA 1974 Benefit Trust be merged into the Combined Fund as of February 1, 1993. The Combined Fund is designed to continue health care coverage for the beneficiaries of the pre-existing trusts. *See* 26 U.S.C. §§ 9702(a)(2), 9703(a), (b), (f). In addition, Congress created the 1992 Plan to provide benefits to eligible retirees who are not beneficiaries of the Combined Fund and who are not receiving health care coverage directly from their former employers. *See* 26 U.S.C. § 9712(a), (b). The Coal Act also requires companies that provided retiree health care through an individual employer plan pursuant to the NBCWAs to continue providing benefits to the plan's current beneficiaries. *See* 26 U.S.C. § 9711.

Two basic policy decisions are reflected in the Coal Act. First, Congress decided to solve the retiree health care crisis on a prospective "going forward" basis, outside the ambit of the collective bargaining process. To accomplish this "fresh start," Congress provided a specific date -- February 1, 1993, the termination date of the 1988 NBCWA -- on which the old collectively-bargained system would be replaced entirely by the statutory system. *See, e.g.*, 26 U.S.C. § 9702(a)(2).

Second, Congress decided that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992) (reproducing proposed conference committee report). The Coal Act implements this "pay for your own" policy (i) by requiring companies to continue their own individual employer plans to provide

ongoing benefits to their own post-1975 retirees, 26 U.S.C. § 9711; (ii) by "assigning" companies financial responsibility for their own retirees in the Combined Fund, 26 U.S.C. §§ 9704, 9706; and (iii) by requiring any existing companies whose retirees receive benefits from the 1992 Plan to pay to the Plan a per beneficiary premium sufficient to cover the health care costs of such retirees, 26 U.S.C. § 9712.

LTV Steel was a major participant in the collectively bargained multiemployer structure for most of that structure's existence. The company was a product of the merger of three major companies, all of whom were founders of the BCOA and all of whom participated in the collectively bargained plans.[7] LTV employed hundreds of coal miners who are now retired, and whose health benefits have been statutorily mandated by the Coal Act.

In January 1993, LTV filed this action in the United States District Court for the Southern District of New York, in anticipation of the assignment of numerous retirees by the Secretary of Health and Human Services ("HHS") pursuant to the Coal Act. LTV alleged that the Coal Act violated the Due Process and Takings Clauses of the Fifth Amendment

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[7]These companies (Jones & Laughlin Steel Corporation, Republic Steel Corporation and Youngstown Sheet and Tube Corporation), along with Olga Coal Corporation, founded the BCOA in 1950. LTV Steel currently owns a majority interest in Olga Coal. As a result of the merger that created LTV Steel, BCNR, Tuscaloosa and Nemacolin became wholly owned subsidiaries of LTV Steel. Prior to the merger, BCNR and Tuscaloosa were wholly owned subsidiaries of Republic Steel Corporation, and Nemacolin was a wholly owned subsidiary of Youngstown Sheet and Tube Corporation.

and that its Coal Act obligations should be discharged in its bankruptcy.[8]

The district court denied LTV's motion for summary judgment on the bankruptcy-related claim on May 11, 1993, and granted the motion of the Combined Fund for summary judgment on that count on December 15, 1993. The court of appeals affirmed. The courts below also rejected LTV's constitutional challenges and LTV has now abandoned those claims.

The court of appeals ruled that LTV is liable for premiums assessed against it pursuant to the Coal Act. The court endorsed the district court's conclusion that "Coal Act obligations are appropriately described as 'taxes' due to their overwhelmingly involuntary nature, their explicitly stated public purpose, and their obvious potential to be imposed pursuant to the taxing power." Pet. App. A-43. These taxes come due each month, and are calculated based upon the number of LTV's retirees receiving benefits from the Combined Fund at the time the premium is assessed.[9] The

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[8]Contrary to LTV's suggestion in the petition, the Complaint did not contain a count alleging violation of the Separation of Powers doctrine.

[9]Having argued below that Coal Act obligations should not be considered taxes within the meaning of the Bankruptcy Code (despite having so characterized them in its own Complaint, *see* Pet. App. C-8 n.4), LTV now claims that the characterization of the obligations is irrelevant. Pet. 9 n.4. LTV's statement is correct if what it means is that the tax characterization does not dispose of the question whether the obligations are pre- or post-petition. The statement is wrong if LTV suggests that the status of the obligation is irrelevant under the Bankruptcy Code. As both courts below held, and as the Bankruptcy Code makes

(continued...)

Court further held that, "the portion of LTV's Coal Act liability accruing during the pendency of its bankruptcy is entitled to treatment as an administrative expense of the estate pursuant to section 507(a)(1). The remainder of LTV's obligations was not dischargeable in bankruptcy and is an obligation of the reorganized LTV." Pet. App. A-43-44.

LTV now petitions for a writ of certiorari, arguing that the Second Circuit's decision is in conflict with decisions of other circuits. In addition, LTV argues for the first time that the Coal Act violates the separation of powers doctrine arising under Article III, section 1, of the United States Constitution.

ARGUMENT

The decision of the court of appeals is correct, and review by this Court is not warranted. Contrary to LTV's claims, there is no conflict among the circuits on any issue affecting this case. No other court of appeals has addressed the treatment of Coal Act claims in bankruptcy, and the Second Circuit's decision is in accord with the decision of every other court of appeals that has addressed what constitutes a claim in bankruptcy, or that has considered whether new and previously non-existent obligations under a statute passed after the filing of a bankruptcy petition constitute pre-petition obligations subject to discharge in bankruptcy.

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[9](...continued)
clear, the character of the obligations as taxes has significance for their treatment during and after the bankruptcy proceedings.

LTV's second argument fares no better. The separation of powers contention was not properly preserved below and is, in any event, unavailing. As LTV itself acknowledges, the Coal Act neither directs the overturning of prior judgments nor seeks to revive previously existing liabilities. LTV succeeded in disposing of its contractual obligations; that it is now subject to different statutory obligations has no effect on prior judicial decisions, and the separation of powers doctrine is neither implicated nor violated by the action of Congress or the court of appeals.

I. THE CASE RAISES NO CONFLICT AMONG THE DECISIONS OF THE COURTS OF APPEALS

As noted above, no other court of appeals has ruled on the character of Coal Act obligations in bankruptcy proceedings.[10] There is therefore no split among the circuits on that issue. Similarly, there is no split among the circuits on the issue of the proper treatment of tax obligations under the Bankruptcy Code. LTV also offers no authority inconsistent with the Second Circuit's evaluation of what constitutes a claim in bankruptcy: the Second Circuit joins the other circuits in concluding that claims in bankruptcy should be broadly defined, but there is no court of appeals that has held that a statute passed years after the filing of a petition in bankruptcy and creating new, previously non-existent liabilities can be considered to create a pre-petition

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[10]The only other court of appeals decision concerning the Coal Act reached the same conclusion as the Second Circuit in sustaining the Act's constitutionality. *See Barrick Gold Exploration, Inc. v. Hudson*, 47 F.3d 832 (6th Cir. 1995), *cert. pending*, No. 94-1938 (filed May 24, 1995). As noted above, LTV has not pursued its constitutional challenges to the Coal Act in this Court.

claim. LTV's argument to the contrary relies on a misstatement of the holding of one case from the Seventh Circuit and a convoluted attack on a decision of the Third Circuit that is immaterial to the Second Circuit's holding.

LTV contends that the Second Circuit's decision requires a definition of "claim" under the Bankruptcy Code which is "inconsistent with the decision of every other court of appeals, other than the Third Circuit, which have analyzed the scope of the 'claim' definition." Petition 10. LTV is simply wrong. The standard applied by the Second Circuit in reaching its decision that Coal Act premiums assessed against LTV are not pre-petition, dischargeable obligations is one which has been used in different cases by a number of courts of appeals. Indeed, while LTV disputes the *outcome* of the application of this standard, it does not appear to challenge the standard itself. As no other court of appeals has reviewed the treatment of Coal Act claims in bankruptcy, a split among the circuits is not possible.

The Bankruptcy Code defines a "claim" as a

> right to payment, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

11 U.S.C. § 101(5)(A). There is no dispute among the circuits that "[a] claim exists only if *before the filing of the bankruptcy petition*, the relationship between the debtor and the creditor contained all the elements necessary to give rise to a legal obligation -- 'a right to payment' -- under the relevant non-bankruptcy law." *In re Nat'l Gypsum*, 139 B.R. 397, 405 (N.D. Tex. 1992) (emphasis added). *See also*

United States v. Union Scrap Iron & Metal, 123 B.R. 831, 835 (D. Minn. 1990); *In re UNR Indus., Inc.*, 29 B.R. 741, 745-46 n.4 (N.D. Ill. 1983). A "right to payment" means "an enforceable obligation." *Johnson v. Home States Bank*, 501 U.S. 78 (1991). *See also In re Geiger*, 143 B.R. 30, 33 (E.D. Pa. 1992), *aff'd*, 993 F.2d 224 (3d Cir. 1993). Thus, a claim does not arise unless and until there is a legal right that, under the appropriate circumstances, will or could mature into a right to payment. If that legal right does not exist on the filing date, there is no pre-petition claim.[11] LTV points to no conflict among the circuits on this issue.

Although this is precisely the standard applied by the Second Circuit, LTV claims that the court's conclusion that, because the Coal Act was passed long after the bankruptcy petition was filed, none of LTV's Coal Act obligations constitute "pre-petition" claims creates a conflict among the circuits.

LTV cites only one case, *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 3 F.3d 200 (7th Cir. 1993), in support of its assertion that such a conflict exists. In *Chicago, Milwaukee*, the Seventh Circuit held that a creditor's indemnification claims arising under CERCLA were barred because the creditor failed to file a timely claim prior to the final bar date *for potential environmental liability of which it was aware prior to the bar date*. Indeed, the EPA had listed the site in question on its list of most dangerous cleanup sites. This case is easily distinguishable -- Coal Act liability could not have been known prior to the bar date because the Coal

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[11] *See, e.g.*, H.R. Rep. No. 595, 95th Cong., 2d Sess. 309, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266 (congressional intent was to encompass all "legal obligations" existing on filing date).

Act did not exist. In addition, Coal Act premiums are, by nature, different from environmental clean-up costs, in that they are tax obligations that accrue on an ongoing basis as long as the company has retirees receiving benefits from the Combined Fund.

Moreover, LTV ignores the second, and more pertinent, issue reviewed by the Seventh Circuit in *Chicago, Milwaukee, i.e.*, the potential indemnification assessment against the debtor for liabilities owed pursuant to a state environmental statute that, like the Coal Act, was enacted after the bankruptcy petition was filed.[12] The Seventh Circuit did not find the newly-created claim barred, and remanded the issue for further findings as to "what liabilities under the Model Act existed in 1985 by virtue of Washington state statutes then in effect." 3 F.3d at 208. On remand, the district court held that the Model Act introduced a new statutory scheme and the liabilities established by the Model Act did not exist previous to its passage. *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 1995 U.S.Dist.LEXIS 10060 (N.D. Ill. July 14, 1995). The court therefore denied the reorganized entity's motion to enjoin indemnification, despite the fact that the statute in question referred to pre-petition conduct in identifying persons subject to its application. A review of the Seventh Circuit's decision makes clear that its conclusions and that of the Second Circuit are in accord.

LTV's only other argument in support of its bankruptcy-related claims consists of an attack on a decision not relied upon by the Second Circuit, that is at least three

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[12]Model Toxics Control Act, Wash. Rev. Code ch. 70.105D (the "Model Act").

steps removed from the analysis of the Second Circuit, and that the district court explicitly recognized was not pertinent to the issues in this case. Although difficult to divine, LTV's contention appears to be that the Second Circuit's reliance on one decision is flawed because that decision relied on another, which in turn relied on another that LTV contends is wrongly decided and with which some courts have expressed disagreement. That the Second Circuit did not rely on the allegedly-discredited opinion, and that the opinion does not relate to the issues present here, are ignored by LTV. In any event, LTV's analysis is incorrect.

LTV challenges the Third Circuit's decision in *In re Penn Central Transp. Co.*, 944 F.2d 164 (3d Cir. 1991), *cert denied sub nom. Penn Central Corp. v. United States*, 503 U.S. 906 (1992)[13] arguing that the *Penn Central* decision should be disregarded because it "derives from an analysis first adopted by the Third Circuit in *In re M. Frenville Co.*, 744 F.2d 332 (3d Cir. 1984), *cert. denied sub nom M. Frenville Co. v. Avellino & Bienes*, 469 U.S. 1160 (1985)." Apparently, LTV bases this argument on the Third Circuit's citation, in *Penn Central*, to *Schweitzer v. Consolidated Rail Corp.*, 758 F.2d 936 (3d Cir.), *cert. denied*, 474 U.S. 864 (1985), which in turn relied upon *Frenville*, a decision that has been criticized by some other courts. Any criticism that may be directed toward the *Frenville* decision is inapplicable

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[13]It should be noted that the Seventh Circuit did not regard the Third Circuit's decision in *Penn Central* to be inconsistent with its findings in *Chicago, Milwaukee*. Rather, the court noted that "CMC acknowledges that the Model Act went into effect after the bar dates and that several courts have held that claims based on a statute enacted after discharge in bankruptcy are not barred." *Chicago, Milwaukee*, 3 F.3d at 208 (*citing Penn Central*).

here, however, as *Penn Central* did not refer to, or rely on, that case. Indeed, *as the district court explicitly found* (Pet. App. C-6 to C-7 n.2) the issue decided in *Frenville* does not even relate to the discussion at hand.[14] LTV is thus unable to support its contention that there is a split in the circuits over any issue pertinent to this appeal. LTV's request for review of the Second Circuit's decision on the bankruptcy issues should therefore be denied.

II. LTV DID NOT PRESERVE A SEPARATION OF POWERS ARGUMENT BELOW

In its petition, LTV states that it "sought a declaratory judgment that the imposition of Coal Act liabilities on LTV Steel would violate ... the separation of powers doctrine because it would vitiate the prior final judgment holding LTV Steel free of liability for mine worker retiree claims." Pet. 7. This assertion is inaccurate. Although LTV claimed that the prior judgment declaring that LTV's contractual obligation had come to an end supported LTV's demand for summary judgment on its bankruptcy claims, it did not characterize that position, or give either the district court or the court of appeals an opportunity to evaluate it, as a separation of

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[14]The portion of *Frenville* with which other courts have disagreed is the holding that "a right *to payment* must exist prior to the filing of the petition." *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 202 (4th Cir.), *cert. dismissed sub nom Joynes v. A.H. Robins Co., Inc.*, 487 U.S. 1260 (1988). In addition, criticism directed toward *Frenville* was also due to the fact that *Frenville* determined the "right to payment" by reference to state law, thereby "fail[ing] to recognize federal bankruptcy policy as 'overriding federal law.'" *See In re Black*, 70 B.R. 645, 649 (D. Utah 1986). The Third Circuit relied upon neither holding in reaching its decision in *Penn Central* that no "claim" existed prior to enactment of the statute under which such a claim would have been asserted.

powers issue. It was offered, if at all, as a res judicata or collateral estoppel issue. This Court should not grant review of an issue not presented to the lower courts.[15]

It is well settled that issues raised for the first time in a petition for certiorari cannot properly be considered by this Court, absent exceptional circumstances not present here. *See Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970). Accordingly, the issue of violation of the separation of powers doctrine is not properly before the Court and provides no basis for review.

III. ASSESSMENT OF COAL ACT OBLIGATIONS DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE

Even if LTV's separation of powers argument were properly before the Court, it is without merit and does not warrant review. As discussed above, LTV maintains that, because it obtained a judgment establishing that its *contractual* obligation to provide benefits to its retirees terminated in 1988 at the expiration of its collective bargaining agreement with the UMWA, the enforcement of the Coal Act's *statutory* obligation offends separation of powers principles. In support of this contention, LTV relies upon this Court's recent decision in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. ___, 115 S. Ct. 1447 (1995), in which section 27A(b) of the FDIC Improvement Act of 1991 was

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[15]The Second Circuit, in summarizing the issues before it, stated that "LTV alleges two constitutional deficiencies in the Coal Act: first, that the Act violates the Due Process Clause, and second, that the Act constitutes a taking of private property without just compensation." Pet. App. A-17.

challenged because it lengthened the statute of limitations for certain securities actions and expressly required courts to reinstate private actions that had been dismissed as time-barred pursuant to an earlier Court ruling. *See Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). Section 27A(b) was held to violate the separation of powers doctrine.

Plaut is plainly inapposite here. The Court in *Plaut* considered legislation that expressly sought to reopen final judgments and reinstate the very causes of action that had been laid to rest by those judgments. In contrast, the Coal Act's requirement that LTV pay statutorily-imposed premiums on behalf of its retirees and beneficiaries has no effect whatsoever on the final judgment entered in the earlier litigation relieving LTV from contractual obligations to its retirees. Rather, it represents a new statutory obligation determined by Congress to be necessary as a matter of public policy. Consequently, the Coal Act does not raise any of the constitutional issues present in *Plaut*.

The Coal Act establishes a prospective, statutory obligation that leaves earlier decisions concerning LTV's contractual liability unaffected. The *Plaut* decision has no effect on this case; it is limited to legislative acts that "compel the Federal courts to vacate, revise, or reconsider final judgments rendered in cases between private parties." *Plaut v. Spendthrift Farm, Inc.*, 1 F.3d 1487, 1497 (6th Cir. 1993), *aff'd*, 514 U.S. ___, 115 S. Ct. 1447 (1995). Even LTV acknowledges that this is not the case here. *See* Pet. 17.

Under the earlier judgment on which LTV relies, LTV's contractual obligation to provide benefits to its retirees was determined to have expired. No one contends otherwise.

But that judgment did not purport to address any future statutory obligations that might arise under later legislation, nor could it have done so if it had tried. Application of the Coal Act contribution obligations to LTV does not require any alteration, revision, or vacating of the earlier judgment. Cases such as *Plaut*, where the legislation called upon the court to reopen a final judgment and reinstate a dismissed cause of action, raise issues simply not present in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 95-63

In the Supreme Court of the United States

OCTOBER TERM, 1995

LTV STEEL COMPANY, INC., ET AL., PETITIONERS

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's obligation to finance a trust funding health benefits for retired coal miners, imposed by the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701-9722 (Supp. IV 1992), is a dischargeable pre-petition claim in bankruptcy, even though the statute was enacted more than five years after petitioner commenced chapter 11 bankruptcy proceedings.

2. Whether the Coal Industry Retiree Health Benefit Act of 1992 violates the separation of powers doctrine.

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LTV STEEL COMPANY, INC., ET AL., PETITIONERS

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.[1]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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[1] The responsibilities of the Secretary of Health and Human Services under the Coal Act have been transferred to the Commissioner of Social Security, effective March 31, 1995. See Social Security Independence and Program Improvements Act of 1994 (1994 Act), Pub. L. No. 103-296, §§ 105(a)(1) and (2)(A), 108(h)(9)(A) and (B), 110(a), 108 Stat. 1472, 1487-1488, 1490. In accordance with Section 106(d) of the 1994 Act, the Commissioner of Social Security is substituted for the Secretary of Health and Human Services as a party in this case. 108 Stat. 1477; see also Sup. Ct. R. 35.3.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A44) is reported at 53 F.3d 478. The opinion of the district court rejecting petitioner's[2] constitutional claims and granting summary judgment to respondents (Pet. App. B1-B18) is reported at 163 B.R. 955. The opinion of the district court holding that petitioner's statutory obligations are not dischargeable pre-petition claims and denying petitioner's motion for partial summary judgment (Pet. App. C1-C15) is reported at 154 B.R. 416.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1995. The petition for a writ of certiorari was filed on July 14, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.* (Supp IV 1992) (Coal Act or Act), was enacted in response to a crisis in health care costs in the coal industry. A brief review of the industry's pre-existing health benefits system is necessary to an understanding of the Act.

For more than 40 years, the United Mine Workers of America and bituminous coal operators have executed a series of national collective bargaining agreements known as National Bituminous Coal Wage Agreements (NBCWAs). Those agreements have governed the terms and conditions of employ-

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[2] Petitioners are the LTV Steel Company, Inc., and three of its wholly owned subsidiaries. Pet. App. A2. The issues with regard to all four petitioners are the same. We therefore refer to them in the singular, as did the court of appeals.

ment in coal mines operated by the members of the Bituminous Coal Operators Association (Association) and other operators who were not members of the Association but who agreed to be bound by the terms of the agreements. Successive NBCWAs established a multi-employer benefit fund that provided lifetime health benefits for active and retired miners. The fund was financed by contributions from mine operators, based on tons of coal mined during the term of each agreement. See Pet. App. A4-A5.

In 1974, the original fund was divided into four separate multi-employer funds, including the UMWA 1950 Benefit Plan and Trust (1950 Plan) and the UMWA 1974 Benefit Plan and Trust (1974 Plan). The 1950 Plan provided lifetime health benefits to miners who retired before January 1, 1976, and their dependents. The 1974 Plan provided lifetime health benefits to miners who retired on or after January 1, 1976, and their dependents. Pet. App. A6-A7.

In 1978, the United Mine Workers and the Association established a new structure for funding retiree health benefits. Under the new system, the 1950 Plan continued to provide health benefits to miners who retired before 1976, but the 1974 Plan was restricted to cover only "orphan" post-1975 retirees, *i.e.*, those whose employer was no longer in business. All other post-1975 retirees were thereafter to receive benefits from individual coal mine operators' employer plans, which were to be established and financed by the signatory coal mine operators. Pet. App. A7.

The 1978 and successor NBCWAs contained a "guarantee" clause, which provided that "the Employers hereby agree to fully guarantee" the health benefits provided by the 1950 and 1974 Plans. They

also included an "evergreen" clause, which required every signatory coal operator who ever made contributions to the Plans to continue to do so at the rate specified in the current NBCWA, whether or not the operator signed that agreement, as long as the operator remained in business. Pet. App. A8-A9. Thus, "[petitioner] was signatory to a series of NBCWAs that included language that gave retired coal miners a legitimate expectation of lifetime health benefits," *id.* at A26, and petitioner "joined in the mining industry's collective assumption of responsibility for the 'orphaned' retirees' benefits," *id.* at A22.

2. By the late 1980s, the financial stability of the retiree health benefit structure in the 1978 NBCWA and successor agreements had been seriously undermined by several developments. First, "as throughout American industry, the costs of health care rose steeply." Pet. App. A11. Second, structural changes in the coal industry caused substantial reductions in both the number of mine operators that were signatories to the NBCWAs and the number of active miners employed by signatory operators. Third, several employers (including petitioner) that ceased coal mine operations successfully contended in court that their obligation to provide health benefits to their retired employees ceased with the expiration of the last NBCWA they signed, and that the 1974 Plan was responsible for their retirees' medical benefits. *Id.* at A11-A12; see *id.* at D1-D13. As a result, a smaller number of signatory operators and active miners were forced to bear the growing costs of providing benefits to an increasing number of beneficiaries of the 1950 and 1974 Plans, see *id.* at A9-A10, and petitioner "succeeded in unloading its share of

the cost of health benefits for the truly 'orphaned' retirees," *id.* at A12.

After a protracted strike against the Pittston Coal Company, in which health benefits were a major issue, and an investigation by a commission appointed by the Secretary of Labor into the coal industry health care crisis, Congress enacted the Coal Act to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, Tit. XIX, Subtit. C, § 19142(b)(3), 106 Stat. 3037. In enacting the Coal Act, Congress essentially removed the subject of health benefits for retirees from the collective bargaining process and dealt with it legislatively instead. Congress found that the existing structure for retiree health benefits should be modified to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees." § 19142(a)(2), 106 Stat. 3037.

The Coal Act rests on the principle that each signatory coal mine operator should bear the cost of providing benefits to its own retirees and should share in the industry-wide cost of providing benefits to "orphan" retirees. To those ends, the statute creates a new United Mine Workers of America Combined Benefit Fund (Combined Fund) as successor to the 1950 and 1974 Plans, and directs the Secretary of Health and Human Services to match the Combined Fund beneficiaries with operators that employed them. 26 U.S.C. 9706(a) (Supp. IV 1992). If the operator is no longer in business, liability for its beneficiaries passes to certain "related persons," if such persons exist. 26 U.S.C. 9706(a), 9701(c)(2) (Supp. IV

1992). Each operator must pay an annual premium to the Combined Fund, equal to the cost of providing benefits to its assigned beneficiaries and its *pro rata* share of the unassigned (or "orphan") beneficiaries. 26 U.S.C. 9704(a) and (b) (Supp. IV 1992).

3. Petitioner filed a chapter 11 bankruptcy petition in 1986 and, through litigation, successfully avoided an obligation to provide health care benefits to its retired mine workers after the expiration of the 1984 NBCWA, in 1988. Pet. App. A11. After the passage of the Coal Act in 1992, petitioner brought this action seeking declaratory and injunctive relief against enforcement of the Act's funding obligations to it. Petitioner contended that its Coal Act obligation to finance the Combined Fund was, in effect, an untimely "claim" against it in the bankruptcy case based on conduct occurring before the filing of the bankruptcy petition. See *id.* at C5 ("Thus, the question is whether the Combined Fund had a 'claim' before the petition was filed."). Petitioner also contended that the Coal Act violates the Due Process and Just Compensation Clauses of the Fifth Amendment.

The district court denied petitioner's motion for partial summary judgment based on the allegedly untimely claim, concluding that petitioner's liability under the Coal Act arose after the petition was filed, and therefore is not barred as a pre-petition claim. "[W]here there is no legal relationship defined at the time of the petition," held the court, "it would be impossible to find even the remotest 'right to payment.' * * * Claims under the Coal Act were not in any sense 'contingent' or 'unmatured' at the time of the petition; they simply did not exist. There is no basis for terming these claims pre-petition." Pet. App. C5-C6. The district court also rejected peti-

tioner's Fifth Amendment arguments, and granted summary judgment to respondents. *Id.* at B1-B18.

4. The court of appeals affirmed. Pet. App. A1-A44. The court acknowledged that Congress intended the term "claim" to have a broad scope, but it noted that, "[h]owever broadly 'claim' is understood, it is clear that the existence of a valid bankruptcy claim depends on (1) whether the claimant possessed a right to payment, and (2) whether the right arose before the filing of the petition." *Id.* at A40. "A claim exists," the court stated, "only if before the filing of the bankruptcy petition, the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation—'a right to payment'—under the relevant non-bankruptcy law." *Ibid.*

Applying that standard, the court concluded that the Coal Act's funding obligation did not implicate a pre-petition claim. It observed that coal mine operators' obligations to finance the Combined Fund arise exclusively out of the Coal Act and "cannot be considered a 'pay-back' for pre-petition labor. Coal Act premiums * * * do not constitute the maturation of a right to payment that vested at the time labor was supplied. [Petitioner's] liability to the Combined Fund is newly imposed by the Coal Act, not a revival of old contractual obligations." Pet. App. A41. Finding "the distinction between statutory and contractual obligations [to be] of paramount importance," the court concluded that "the existence of a prior contractual liability for retiree health benefits * * * does not render pre-petition the later statutory

imposition of retiree health care obligations by Congress." *Ibid.*[3]

ARGUMENT

The court of appeals correctly held that petitioner's obligation under the Coal Act to fund the UMWA Combined Benefit Fund is not a dischargeable pre-petition claim. That decision does not conflict with any decision of this Court or any other court of appeals. Further review therefore is not warranted.

1. Chapter 11 of the Bankruptcy Code permits the reorganization of a debtor under a plan that, when confirmed, discharges the debtor "from any debt that arose before the date of [the] confirmation" of the reorganization plan. 11 U.S.C. 1141(d)(1)(A). The Code defines a "debt" as a "liability on a claim," 11 U.S.C. 101(11), and defines a "claim," in turn, as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(4)(A).

While the Code's definition of "claim" is quite broad, the court of appeals correctly concluded that petitioner's reorganization proceedings did not affect its obligation to fund the Combined Fund under the Coal Act. Under the Code, "a 'right to payment' is

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[3] The court of appeals also rejected petitioner's Fifth Amendment contentions, Pet. App. A17-A39, which petitioner has not renewed in this Court. A petition for a writ of certiorari raising a due process challenge to the Coal Act is pending before the Court in *Barrick Gold Exploration, Inc.* v. *Hudson*, No. 94-1938. In this Court, petitioner has raised a new separation of powers claim, which is discussed at pp. 12-13, *infra*.

nothing more nor less than an enforceable obligation." *Pennsylvania Dep't of Public Welfare* v, *Davenport*, 495 U.S. 552, 559 (1990). Petitioner had no "enforceable obligation" to finance the Combined Fund until the Coal Act took effect on February 1, 1993, well after petitioner filed its bankruptcy petition. Thus, no right to payment (or "claim") on behalf of the Combined Benefit Fund could have arisen before the Coal Act took effect, and petitioner's obligation to finance the Fund cannot be regarded as a pre-petition claim.

Petitioner maintains that the Coal Act, in essence, revives its retired miners' claim for health benefits, which did arise before the bankruptcy petition was filed. As the court of appeals observed, however, petitioner's obligation to the Combined Fund is "exclusively statutory in origin." Pet. App. A41. The fact that the *purpose* of the Coal Act is to provide funding for retired miners' health benefits does not alter the analysis, for the source of petitioner's liability to the Combined Fund is the Coal Act, not "a revival of old contractual obligations." *Ibid.*

The court of appeals' conclusion is consistent with the only other appellate decision that has addressed a similar issue, *In re Penn Central Transporation Co.*, 944 F.2d 164 (3d Cir. 1991), cert. denied, 503 U.S. 906 (1992). In *Penn Central*, the court concluded, under the old Bankruptcy Act, that the 1978 confirmation of the railroad's reorganization plan did not preclude lawsuits brought against the railroad under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* The court of appeals observed in *Penn Central* that, prior to the enactment of CERCLA, "there was no statutory basis for liability

to be asserted"; therefore, the 1978 confirmation of the plan did not preclude the filing of a lawsuit under the 1980 law. 944 F.2d at 167.

Petitioner contends (Pet. 13-15) that there is disagreement among the courts of appeals as to whether the existence of a "claim" depends on whether liability becomes ripe under applicable non-bankruptcy law before the filing of the bankruptcy petition. The cases cited by petitioner, however, do not concern the situation presented in this case or in *Penn Central*, where the liability arose under a statute that was passed after the bankruptcy petition was filed. Those cases concern a different issue, namely, whether a plaintiff has a "claim" for bankruptcy purposes at the time that the bankruptcy petition is filed, when the plaintiff was allegedly injured by an action taken by the debtor before the bankruptcy petition was filed, but the injury did not become manifest until after the petition was filed. In the cases cited by petitioner, but unlike this one, the source of liability on which the claim was predicated existed at the time of the filing of the bankruptcy petition, although the plaintiff may not have been aware of the existence of the claim at that time.

For example, in *Lemelle* v. *Universal Manufacturing Corp.*, 18 F.3d 1268 (5th Cir. 1994), the plaintiffs sought damages from a mobile home manufacturer under a tort theory of negligent design. The mobile home was manufactured in 1970, the discharge from debts was ordered in 1983, and the plaintiffs' mobile home fire took place in 1985. See *id.* at 1271, 1274-1278. The case did not involve any new theory of liability that became available after the bankruptcy petition was filed, but rather involved a settled theory of tort law. Similarly, *Grady* v. *A.H. Robins Co.*, 839

F.2d 198 (4th Cir.), cert. dismissed, 487 U.S. 1260 (1988), involved a claim for damages based on injuries from the use of the Dalkon Shield, arising under a common law theory of liability that was established when the bankruptcy petition was filed, and *In re Hemingway Transport, Inc.*, 954 F.2d 1 (1st Cir. 1992), involved a claim under CERCLA, which was enacted before the bankruptcy petition in that case was filed.

Petitioner also contends (Pet. 13) that the decision below conflicts with *In re Chicago, Milwaukee, St. Paul & Pacific R.R.*, 3 F.3d 200 (7th Cir. 1993). *Chicago, Milwaukee* dealt with environmental claims that arose before the bar date in a railroad reorganization case. The district court and the court of appeals both held that claims brought pursuant to CERCLA were barred, since that statute was in effect at the time of the bar date but the relevant party with constructive knowledge of the toxic contamination did not file a claim before that deadline. *Id.* at 206-207. In contrast to its conclusion regarding the CERCLA claims, the district court in that case held that liability under the State of Washington's Model Toxics Control Act was not barred because that statute did not go into effect until after the relevant bar date. *Id.* at 207-208. The court of appeals remanded that part of the district court's decision for further proceedings, but it noted that "several courts have held that claims heard on a statute enacted after discharge in bankruptcy are not barred," *id.* at 208, and it cited *Penn Central* for that proposition, *ibid.* The court of appeals left open the issue presented in this case, and it did not hold broadly that "liability under post-bar date environmental laws is barred

when some liability existed before the bar date," as petitioner suggests (Pet. 13).

At bottom, petitioner's argument is a contention that Congress lacks the power to legislative retrospectively with respect to the health benefits of petitioner's retirees. But this Court has consistently upheld the authority of Congress to impose liability for past acts, even if its retrospective legislation "upsets otherwise settled expectations." *Pension Benefit Guaranty Corp.* v. *R. A. Gray & Co.*, 467 U.S. 717, 729-730 (1984); see *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15-16 (1976); *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986). Although petitioner had obtained, through litigation, an adjudication that it was no longer legally responsible for its retirees' health benefits, Congress rationally concluded that petitioner should join in contributing to the amelioration of the general crisis of health care costs in the coal mining industry. As the court of appeals observed, petitioner voluntarily joined in the industry's assumption of responsibility for retired miners' health benefits (Pet. App. A22), and "[i]t is surely proper for Congress to legislative retrospectively to ensure that the costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *United States* v. *Sperry Corp.*, 493 U.S. 52, 65 (1989).

2. Petitioner contends (Pet. 15-17) that the court of appeals' construction of the Coal Act violates the separation of powers doctrine, as construed in *Plaut* v. *Spendthrift Farm, Inc.*, 115 S. Ct. 1447 (1995), because the Act requires the reopening of the question of petitioner's liability for its retirees' health benefits after that matter was finally settled in the courts. That contention is without merit.

In *Plaut*, the Court held that Congress could not, by statute, require relitigation of a case that had been finally dismissed prior to the statute's enactment. The Court stated that "a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." 115 S. Ct. at 1457. The Coal Act, however, does not require relitigation of the controversy between petitioner and its retirees, nor does it attempt to change the law applicable to that controversy. Rather, the Coal Act creates an entirely new source of liability running solely between petitioner and the Combined Fund, and not between petitioner and the retirees who lost the earlier litigation. Cf. *Plaut*, 115 S. Ct. at 1461 (noting that Congress could create a "new cause of action for attorney's fees attributable to already concluded litigation" without violating separation of powers). Because the Coal Act does not reopen any concluded litigation, it presents no separation of powers problem under *Plaut*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

October Term 1995

In re CHATEAUGAY CORPORATION,
REOMAR, INC.,
THE LTV CORPORATION, *et al.*,

Debtors.

LTV STEEL COMPANY, INC.,
BCNR MINING CORPORATION,
NEMACOLIN MINES CORPORATION, and
TUSCALOOSA ENERGY CORPORATION,

Petitioners,

v.

DONNA E. SHALALA, Secretary, Department of Health and Human Services; MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOTT A. SEGAL, CARLTON R. SICKLES, GAIL R. WILENSKY; THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, MICHAEL H. HOLLAND, as Trustee of the Combined Fund, and WILLIAM P. HOBGOOD, as Trustee of the Combined Fund,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

LTV Steel asks this Court to decide whether the Court of Appeals for the Second Circuit properly interpreted the Coal Act. The Second Circuit held that the Coal Act imposed statutory liability upon LTV Steel for mine worker retiree benefits, based *exclusively* upon pre-petition contracts, after LTV Steel's liability under the same contracts had been terminated by a final judgment and was discharged in bankruptcy. Respondents acknowledge that LTV Steel's contractual obligations for these benefits were discharged in bankruptcy and terminated by final judgment. In opposition to LTV Steel's petition they assert, however, that because the Coal Act was enacted after the filing of LTV Steel's petition, obligations under the Coal Act are unaffected by the bankruptcy discharge or the final judgment.

Respondents' assertion is unfounded. Respondents treat the issue raised by LTV Steel's petition as merely a question of retroactivity. Their argument depends upon their assumption that liability under the Coal Act is different from liability under the contracts. But that is the question presented to the Court. The liability is exactly the same: both the contracts and the Coal Act require payment of funds to the same trust for the same health benefits to the same retired mineworkers. More importantly, the Coal Act imposes liability *exclusively* as a consequence of those prior contracts. Because they do not acknowledge these facts, respondents fail to address, let alone refute, the petition's central contention that, as to LTV Steel, the Second Circuit's construction of the Coal Act violates both the Bankruptcy Code and the separation of powers doctrine.

Respondents' arguments conflict with both settled principles of jurisprudence and with the Constitution. "A single

transaction ordinarily gives rise to but one claim by one person against another." RESTATEMENT (SECOND) OF JUDGMENTS, § 24 at ¶c (1982). "Mere adoption of new statutory provisions does not defeat claim preclusion, however, if a single closed transaction is involved." 18 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4411 (1981). The separation of powers doctrine, which bars Congress from legislatively changing the outcome of a judgment between two parties, even when it may retroactively change the law as to others, is also implicated where legislation is construed to effect the reversal of a prior final judgment.

Respondents' subsidiary points merit only brief response. They contend that no split in the Circuits warrants review of the Second Circuit's decision, asserting that no other Circuit has addressed the interaction between the Coal Act and the Bankruptcy Code. This assertion is inaccurate. First, a court in another Circuit has held, in opposition to the Second Circuit's decision, that Coal Act claims may be discharged in bankruptcy. *See In re CF&I Fabricators of Utah, Inc.*, 169 B.R. 984, 988, 992 (D. Utah 1994).[1] Just as in this case, the CF&I bankruptcy filing preceded the enactment of the Coal Act. In dismissing on mootness grounds the Fund's appeal

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1. The Combined Fund argues here that it could not have filed claims in the LTV Steel case. However, on January 25, 1993 the Combined Fund filed proofs of claim under the Coal Act in the CF&I bankruptcy, after the bar date in that case had been extended to permit their assertion of such claims. *See In re CF&I Fabricators,* 169 B.R. at 988. The Combined Fund made no attempt to have the bar date extended or to file claims in the LTV Steel case.

from an order discharging Coal Act claims against the debtor, that court relied upon the Seventh Circuit's decision in *In re UNR Industries, Inc.*, 20 F.3d 766 (7th Cir.), *cert. denied*, 115 S.Ct. 509 (1994), which held that future claims for medical payments on account of pre-petition asbestos-related injuries were ''claims'' which are properly addressed in bankruptcy.[2]

Second, the issue raised by this petition is not narrowly limited to Coal Act claims, but is addressed to the interpretation of a key provision of the Bankruptcy Code, the term ''claim''. The Second Circuit's decision limits the definition of ''claim'' sharply, holding that a statute enacted post-petition could not create a pre-petition claim, even when pre-petition acts are the exclusive basis for liability. This holding creates a conflict with *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 3 F.3d 200 (7th Cir. 1993). The Second Circuit's analysis extends well beyond the Coal Act itself, and therefore sharpens the conflict among the Circuits as to the appropriate reach of ''claim'' where legislation triggers future liability based upon past acts.

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2. The court noted the Fund's ''strategic gamble'' in submitting its claims, and commented on

> ''the Funds' misunderstanding of the power a bankruptcy court has over all potential 'claims' in bankruptcy. For example, the Funds argue that the Bankruptcy Court erred in characterizing CF&I's Coal Act obligations as 'claims' and then discharging them, because they were merely future month-to-month obligations that hadn't yet come due. Judge Easterbrook's opinion in *[UNR Industries]* however, clearly addresses that argument and rejects it.'' *In re CF&I Fabricators*, 169 B.R. at 992.

Contrary to respondents' insinuations, this is not a narrow or esoteric issue, unlikely to arise again. The scope of the term "claim" is constantly before the courts. For example, since this petition was filed the Eleventh Circuit has ruled, in opposition to the Second Circuit, that a pre-petition "claim" exists, even where injury occurs post-petition, if the injured party has some pre-petition relationship with the debtor's product or pre-petition conduct. *Epstein* v. *Official Committee of Unsecured Creditors*, 58 F.3d 1573, 1577 (11th Cir. 1995).[3] Congress may be expected to continue to enact legislation addressing newly discovered injuries arising from long past acts. The issue will continue to arise.

Finally, respondents argue that LTV Steel failed to preserve its separation of powers argument. They are wrong. In its brief to the Second Circuit, LTV Steel raised exactly the arguments raised in its petition.

> Secondly, if the Coal Act were found to permit recovery of these claims, then, as applied to LTV Steel it would violate the separation of powers doctrine. It has long been the law that 'if Congress may by legislation reverse or vacate the final judgments of the Federal courts, then Congress has rendered the whole function of the judiciary futile.' *Plaut* v. *Spendthrift Farm, Inc.*, 1 F.3d 1487, 1499 (6th Cir. 1993), *petition for cert. filed*, (U.S. Jan. 11, 1994) (citing *Hayburn's Case*, 2 U.S. (2 Dall.) 409

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3. The issue arises in many contexts. *See, e.g., In re Savage Indus., Inc.*, 43 F.3d 714, 720 (1st Cir. 1994) (discussing requirement that persons who may have future claims against a debtor be given notice of sale free and clear of such claims).

(1792) (where court refused to enforce a law that provided for executive review of court's decision).

* * *

The same rule applies where the final judgment concerns a right derived from a contract. For example, in *McCullough* v. *Virginia*, 172 U.S. 102, 122-23 (1898), after a final judgment had issued regarding the right to pay taxes with coupons from state issued bonds, the legislature effectively nullified that right by statute. The Supreme Court held:

'It is not within the power of a legislature to take away rights which have been once vested by a judgment. Legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into judgment the power of the legislature to disturb the rights created thereby ceases.'

Brief of LTV Steel at 20-21, submitted on appeal to the Second Circuit, Docket No. 94-6024.

CONCLUSION

The decision of the Court of Appeals for the Second Circuit raises two important federal questions. Each merits review by *certiorari*. Petitioners respectfully request that their petition be granted.

Dated: New York, New York
September 20, 1995

Respectfully submitted,

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